96-93

TAX TREATMENT OF MARRIED, HEAD OF HOUSEHOLD, AND SINGLE TAXPAYERS

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

LEGISLATIVE PROPOSALS RELATING TO THE COMPARATIVE INCOME TAX TREATMENT OF MARRIED COUPLES, SINGLE PERSONS, AND HEADS OF HOUSEHOLD

APRIL 2 AND 3, 1980

Serial 96–93

Printed for the use of the Committee on Ways and Means

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CONTENTS

	Page
Press release of Friday, February 29, 1980, announcing hearings	2
Summary of report prepared by the Joint Committee on Taxation	4

WITNESSES

Department of the Treasury, Emil M. Sunley, Deputy Assistant Secretary for Tax Policy	10

Boyter, H. David and Angela M., Ellicott City, Md	163
Brown, Hon. Clarence J., a Representative in Congress from the State of Ohio	158
Comiskey, Justine, New Jersey Education Association	183
Conners, John K., Albany, N.Y	339
Coward, Janine H., Washington, D.C	336
Donohue, Florence B., New York, N.Y	312
Druker, James O., New York, N.Y	321
Druker, Joan, New York, N.Y	332
Epstein, Alan J., Somerville, N.J	328
Fenwick, Hon. Millicent, a Representative in Congress from the State of New Jersey	37
Gale, Lawrence R., Zanesville, Ohio	343
Gann, Pamela B., Duke University	140
Hannegan, Violeta, New Jersey Education Association	183
Hartgraves, Al, University of South Carolina	144
Indiana General Assembly, Phyllis Pond	105
Interdepartmental Task Force on Women, Action Group on the Marriage Tax Penalty, Sydney J. Key	110
Jamin, Gail A. and Robert S., Tax Divorce Consultants, Inc	185
Jeffords, Hon. James M., a Representative in Congress from the State of Vermont	160
Key, Sydney J., Action Group on the Marriage Tax Penalty, Interdepartmental Task Force on Women	110
LaFalce, Hon. John J., a Representative in Congress from the State of New York	156
Mapes, Paul A., Arlington, Va	323
Mathias, Hon. Charles McC., a U.S. Senator from the State of Maryland	37
McIntyre, Robert S., Public Citizen's Tax Reform Research Group	168
Moerschbaecher, Lynda, Yale University	304
National Commission for Employment Policy, Ralph E. Smith	131
New Jersey Education Association, Violeta Hannegan and Justine Comiskey	183
O'Neill, June, Washington, D.C	135
Pond, Phyllis, Indiana General Assembly	105
Public Citizen's Tax Reform Research Group, Robert S. McIntyre	168
Quayle, Hon. Dan, a Representative in Congress from the State of Indiana	102
Sanchez, Samantha, Catholic University School of Law	289
Schaer, Barbara J., Tax Information Center	325
Schwartz, Ned, Western New England College	149
Seiberling, Hon. John F., a Representative in Congress from the State of Ohio	161
Shinder, Dorothy, San Mateo, Calif	340
Smith, Ralph E., National Commission for Employment Policy	131
Tax Divorce Consultants, Inc., Gail A. and Robert S. Jamin	185

Page
Tax Information Center, Barbara J. Schaer 325
Taylor, Edwin T., Attleboro, Mass 330
Thornton, Eileen P., Women's Equity Action League, New Jersey Division 181
Wenig, Mary Moers, University of Bridgeport School of Law 231
Women's Equity Action League, New Jersey Division, Eileen P. Thornton 181

MATERIAL SUBMITTED FOR THE RECORD

American Association of Retired Persons, National Retired Teachers Association, Peter W. Hughes, letter 391
Ammerman, Lenell G., Chevy Chase, Md., letter 345
Anderson, Doris L., Pomona, Calif., letter 345
Applegate, Hon. Douglas, a Representative in Congress from the State of Ohio, statement 345
Aurbach, Laurence J., Washington, D.C., letter 346
Bathgate, Vivien, R.N., Altoona, Pa., letter 346
Bayless, Glenda M., Glenda M. Bayless Accountancy Corp., Rialto, Calif., letter 368
Beighley, Alice C., and K. C., Stockton, Calif., letter 347
Bennett, Charles E., a Representative in Congress from the State of Florida, statement 347
Benson, Rosemary M., Trenton, N.J., letter 347
Biermann, Claudia, Olympia, Wash., letter 348
Boyer, Dale E., Pittsburgh, Pa., letter 348
Brick Town (N.J.) chapter, American Association of Retired Persons, Inc., Joseph Krasner, letter 349
Budassi, Stephen P., Trenton, N.J., letter 349
Burnette, Mr. and Mrs. C. W., Raleigh, N.C., letter 349
Byron, Hon. Beverly B., a Representative in Congress from the State of Maryland, statement 163
Callahan, Mary Lou, Detroit, Mich., letter 349
Callejo, Ricardo A., Spanish Speaking/Surnamed Political Association, Inc., letter 407
Cannon, Mary Ann (and 118 others), West Trenton, N.J., letter 349
Capron, Barbara A., and David A. Holm, Burlington, Mass., joint letter 375
Carter, Sue C., Raleigh, N.C., letter 350
Chalofsky, Barry (and 7 others), West Trenton, N.J., letter 350
Clement, Cecilia E., Newtown Square, Pa., letter 350
Cole, Mr. and Mrs. Robert, Bordentown, N.J., letter 350
Corson, Rochelle M., and Margaret H. McDowell, New York County Lawyers' Association, joint letter and enclosure 392
Crowder, Mrs. J. F., Plymouth, Calif., letter 351
Dammeyer, Catherine M., and Sanford G. Thatcher, East Windsor, N.J., joint letter 351
Davis, Thomas L., Raleigh, N.C., letter 350
Deblon, Tom, Stanhope, N.J., letter 352
Deitz, Morton, Trenton, N.J., letter 352
DiCerbo, Roberta, Mount Holly, N.J., letter 353
Doughty, Joseph E., Hopewell Junction, N.Y., letter 353
Dunlop, Alfred E., New Providence, N.J., letter 354
Dunlop, Eleanor Pearl, Wilmington, Del., letter 354
Dunn, Kathleen A., Bound Brook, N.J., letter 354
Duran, James A., Jr., Ransomville, N.Y., letter 355
Dzugan, Kenneth, St. Paul, Minn., statement 356
Eovaldi, Suzanne, Chicago Heights, Ill., letter 356
Fascell, Hon. Dante B., a Representative in Congress from the State of Florida, statement 357
Fenwick, Hon. Millicent H., a Representative in Congress from the State of New Jersey, statement and attachments 42
Filler, Stuart J., Bridgeport, Conn., statement 357
Fray, Barbara Jean, Raytown, Mo., letter 365
Friedman, Julian R., Savannah, Ga., letter 365
Gallagher, (Mrs.) Donna R., Atlanta, Ga., letter 348
Glatt, Melvin Jay, the Jewish Center, Princeton, N.J., letter 377
Goitia, Virginia, Meridian, Idaho, letter 368
Goldblatt, Joe Jeff, Washington, D.C., letter 368

Page

Gratiot, John P. and Susan Morgan, Denver, Colo., letter 368
Gravel, Hon. Mike, a U.S. Senator from the State of Alaska, statement 369
Green, H. J., Riverside, Calif., letter 368
Green, Hon. S. William, a Representative in Congress from the State of New York, statement 370
Grelle, Allen F., Detroit, Mich., letter 371
Grelle, June Wells, Denver, Colo., letter 371
Haas, Carol (and 11 others), Bordentown, N.J., letter 372
Hanson, Loretta M., Saginaw, Mich., letter 372
Harris, Hon. Herbert E., II, a Representative in Congress from the State of Virginia, statement 373
Heimer, Muriel K., Cocoa, Fla., letter 373
Hill, William, Columbus, N.J., letter 373
Hinrichs, Sue N., Stockton, Calif., letter 374
Hinson, Hon. Jon, a Representative in Congress from the State of Mississippi, statement 374
Holm, David A., and Barbara A. Capron, Burlington, Mass., joint letter 375
Hood, Susan, New York, N.Y., letter 375
Horowitz, Sarah, Highland Park, N.J., letter 376
Huffenus, Linda M., Sommerville, N.J., letter 376
Hughes, Peter W., National Retired Teachers Association, American Association of Retired Persons, letter 391
Jewish Center (The), Rabbi Melvin J. Glatt, Princeton, N.J. 377
Jones, Thomas Alan, San Juan Capistrano, Calif., letter 377
Karlen, Fred W., Riverside, Calif., letter 368
Kehayes, Helen, Millburn, N.J., letter 352
Keithahn, Gila, San Juan Capistrano, Calif., letter 378
Kenia, Julie, Long Valley, N.J., letter 378
Kleyla, Carol J., Elwood, Ind., letter 378
Krasner, Joseph, Brick Town (N.J.) chapter, American Association of Retired Persons, Inc., letter 349
Landsmann, Leanna, New York, N.Y., letter 379
Leeds, Florence, Millburn, N.J., letter 379
Lehman, Hon. William, a Representative in Congress from the State of Florida, statement 379
Lessing, Kenneth O., Opa Locka, Fla., letter 380
Luby, Kathleen S., Cincinnati, Ohio, letter 348
Lucas, Joy G. (and 31 others), Avenel, N.J., petition 380
Lynner, Nancy, Washington, D.C., letter 380
Maas, Robert A., Glendale, Wis., letter 380
MacKenzie, Joan and William, Middletown, N.J., letter and enclosures 381
Magee, Jeanne M., Summit, N.J., letter 383
Magness, Lois and M. B., Dallas, Tex., letter 383
McDonald, Hon. Larry P., a Representative in Congress from the State of Georgia, statement 383
McDowell, Margaret H., and Rochelle M. Corson, New York County Lawyers' Association, joint letter and enclosure 392
McIntyre, Michael J., Detroit, Mich., statement 384
Mercer, Barrie and Judy, Mar Vista, Calif., letter 388
Mollohan, Hon. Robert H., a Representative in Congress from the State of West Virginia, statement 388
Morse, John A., Falls Church, Va., letter 389
Mynick, Harry E., Princeton, N.J., letter 389
National Council of Churches of Christ in the USA, Rev. G. William Sheek, statement 389
National Federation of Business and Professional Women's Clubs, Inc., statement 390
National Retired Teachers Association, American Association of Retired Persons, Peter W. Hughes, letter 391
Newell Mark L. and Karen R., Portland, Oreg., letter 392
New York County Lawyers' Association, Margaret H. McDowell and Rochelle M. Corson, letter and enclosure 392
Ottinger, Hon. Richard L., a Representative in Congress from the State of New York, statement 393
Patrick, Marlene, Calumet, Mich., letter 394

	Page
Patten, Hon. Edward J., a Representative in Congress from the State of New Jersey, statement	395
Plumeri, Carol Johnson, East Windsor, N.J., letter	399
President's Advisory Committee for Women, Lynda Johnson Robb, statement	399
Pym, Edna T., Wharton, N.J., letter	400
Quarles, Dana C., New Providence, N.J., letter	401
Radlinsky, William V., Mercerville, N.J., letter	401
Richardson, Brian, Summit, N.J., letter	352
Richardson, Carolyn S., Summit, N.J., letter	352
Rimsay, Mrs. Murray H., Chicago, Ill., letter	401
Rivera, Ben, Manahawkin, N.J., letter	401
Robb, Lynda Johnson, President's Advisory Committee for Women, statement	399
Rogers, Mary Rae, Trenton, N.H., letter	402
Rose, Edith S., and Louise M. Samaroo, Princeton, N.J., joint letter	402
Rusnak, Mrs. K., Trenton, N.J., letter	402
Samaroo, Louise M., and Edith S. Rose, Princeton, N.J., joint letter	402
Sandersen, Gerard L., Yakima, Wash., letter	402
Scerbo, Thomas J., Mount Tabor, N.J., letter	403
Schroeder, Hon. Patricia, a Representative in Congress from the State of Colorado, statement	403
Schundler, Robert J., Westfield, N.J., letter and enclosures	404
Shayer, Norman, West Orange, N.J., letter and enclosure	405
Sheek, Rev. G. William, National Council of Churches of Christ in the U.S.A., statement	389
Shepherd, Cynthia D., Tulsa, Okla., letter	406
Sliwa, Robert R. and Mary Ann, Trenton, N.J., letter	406
Smith, Susan L. and Guy C., Skippack, Pa., letter	407
Solan, Dolores, Yardville, N.J., letter	407
Spanish Speaking/Surnamed Political Association, Inc., Ricardo A. Callejo, letter	407
Straka, Viola, West Palm Beach, Fla., letter	407
Swartz, Paul, Summit, N.J., letter	407
Swift, Hon. Al, a Representative in Congress from the State of Washington, statement	408
Tauke, Hon. Tom, a Representative in Congress from the State of Iowa, statement	408
Thatcher, Sanford G., and Catherine M. Dammeyer, East Windsor, N.J., joint letter	351
Turp, Ernest B. and Virginia L., Hightstown, N.J., letter	410
Vail, James W., III, Riverside, Calif., letter	368
Valentik, Steve P., Boulder, Colo., letter	410
Vander Jagt, Hon. Guy, a Representative in Congress from the State of Michigan, statement	411
Wacksman, David J., West Palm Beach, Fla., letter	412
Walters, David N. and Linda P., Arlington, Va., letter	412
Weil, Susan R., Columbus, Ind., letter	412
Whitehurst, Hon. G. William, a Representative in Congress from the State of Virginia, statement	413
Whitten, Kay, Washington, D.C., letter	414
Wry, Brann J. and Ellen T., Trenton, N.J., statement	414

TAX TREATMENT OF MARRIED, HEAD OF HOUSEHOLD, AND SINGLE TAXPAYERS

WEDNESDAY, APRIL 2, 1980

House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The committee met at 10:30 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Al Ullman (chairman of the committee) presiding.

The Chairman. The committee will be in order. We are proceeding with public hearings today on the very important "marriage penalty" problem. Present income tax law treats married couples, single persons, and heads of households differently.

The law generally treats a married couple as one tax unit which must pay tax on its total taxable income. While married couples may elect to file separate returns, the tax law is structured so that filing separate returns leads to a tax increase for almost all couples compared to filing a joint return.

Under present law, different tax rates apply to married head of households and single taxpayers. In addition, some provisions in the Internal Revenue Code provide different treatment to married heads of households and single taxpayers. The overall relationship between the tax burden of married couples and single persons, including heads of households, with the same income and the actual marriage and divorce bonuses or penalties in particular cases are the result of the combined effect of the different provisions and different tax rate schedules.

The hearings today will explore several important issues including the appropriate tax unit, the group whose income and deduction should be pooled in determining tax liability, the proper income tax relationship among various types of taxpayers, the proper relative tax burdens among different tax units—in particular, the higher tax burden imposed on a single person compared to a married couple when each of those units has the same amount of income—and the marriage penalty—the increased tax burden that two single persons may experience when they marry.

Over 30 bills with over 200 sponsors on this subject have been introduced during the 96th Congress. The committee looks forward to hearing the witnesses and their views on the many different proposals embodied in these bills.

[The press release announcing the hearing and a summary of the issues follow:]

[Press release of Friday, Feb. 29, 1980]

HONORABLE AL ULLMAN (D., OREGON), CHAIRMAN, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES PUBLIC HEARINGS TO BE CONDUCTED ON APRIL 2 AND 3, 1980, ON THE TAX TREATMENT OF MARRIED, HEAD OF HOUSEHOLD, AND SINGLE TAXPAYERS

The Honorable Al Ullman (D., Oregon), chairman, Committee on Ways and Means, U.S. House of Representatives, today announced that the Committee on Ways and Means will conduct public hearings on Wednesday, April 2, 1980, and Thursday, April 3, 1980, beginning at 10 a.m. in the main committee hearing room (1100 Longworth House Office Building) on legislative proposals relating to the comparative income tax treatment of married couples, single persons and heads of household. In announcing these hearings, Chairman Ullman noted the complexity of the policy issues involved, the difficulty of reconciling the widely-held principles of Federal income taxation and the many different approaches proposed in over thirty bills on this subject that have been referred to the Committee on Ways and Means in the 96th Congress. In addition, the chairman noted the lack of general agreement on the appropriate tax unit, on the proper income tax relationship among various types of taxpayers and on the proper relative tax burdens among different tax units.

Under present law, married couples with one earner, married couples with two earners, single persons and heads of households are accorded different tax treatment. The hearings announced today will especially explore (1) the "marriage penalty"—the increased tax burden that two single persons may experience when they marry and—(2) the higher tax burden imposed on a single person compared to a married couple when each of these "units" has the same amount of income.

The committee expects to receive testimony from representatives of the Department of the Treasury to be followed by testimony from Members of Congress and the general public who have requested to be heard.

Individuals and organizations interested in presenting oral testimony before the committee at this hearing should submit their requests to be heard in writing to John M. Martin, Jr., Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515 (telephone: 202-225-3625), not later than the close of business Friday, March 21, 1980. Notification to those scheduled to appear will be made as soon as possible after the filing deadline.

The limited time available to the committee requires that all persons and organizations having a common position make every effort to designate one spokesman to represent them in order for the committee to hear as many points of view as possible. Time for oral presentations will be strictly limited, with the understanding that a more detailed statement can be submitted for the committee's review and for inclusion in the printed record of the hearing. This will afford more time for interrogation of the witnesses by the members of the committee. If it becomes necessary, the staff of the committee will group the witnesses into panels to expedite the hearing and will establish time limitations for each panelist. It will not be possible to change the date of the scheduled appearance once that date has been assigned—either the witness or a designated substitute for him must appear on that date or forego the opportunity to be heard in person. Organizations and individuals scheduled to be heard are urged to notify the committee office immediately of any change in the witness or cancellation of a scheduled appearance.

Following is an outline of the information to be supplied by organizations and individuals who may either want to appear and testify during this hearing or file a written statement for the printed record of the proceedings:

1. The name of the witness, his title, address, firm affiliation and/or organization he will represent (as well as a telephone number where he or his designated representative may be reached).
2. If appearing in an individual capacity, a list of any clients at whose request or in whose employ the witness appears.
3. A topical outline or summary of comments and recommendations.

The above information should also be incorporated in the prepared statements to be presented in person as well as those filed for the printed record of the hearing.

Witnesses will be required to submit 75 copies of their prepared statements to the full committee, room 1102 Longworth House Office Building, at least 24 hours in advance of the appearance. For those who wish to file a written statement for the record of the hearing, five copies are required and may be submitted throughout the course of the hearing. An additional supply of statements for either a personal appearance or for the printed record may be furnished for distribution to the press and public if supplied to the committee office before the hearing begins.

[From "The Income Tax Treatment of Married Couples and Single Persons," a report prepared by the staff of the Joint Committee on Taxation, April 2, 1980]

I. SUMMARY

Present Law

The income tax law generally treats a married couple as one tax unit, which must pay tax on its total taxable income. While couples may elect to file separate returns, the tax law is carefully structured so that filing separate returns leads to a tax increase for almost all couples compared to filing a joint return. Different tax rate schedules apply to single persons and to single heads of households (persons who maintain households for certain relatives). Along with other provisions of the law, these rate schedules give rise to a "marriage penalty" or a "divorce bonus" when persons with relatively equal incomes marry or divorce each other.

Except for the policy of discouraging separate filing by married couples, there is little consistency in the way the tax law treats married couples relative to single persons. In some provisions, such as the social security payroll tax and some pension provisions of the income tax, a married couple is treated as two distinct individuals. In some provisions, such as the personal exemption, a couple is given exactly twice the benefit given to a single person. However, in other provisions, such as the $3,000 limit on the deductibility of capital losses against ordinary income, a married couple is given the same benefit as a single person. Still other provisions, such as the zero bracket amount (formerly the standard deduction), give the married couple more than a single person but less than twice as much.

The overall relationship between the tax burdens of married couples and single persons with the same income, and the actual marriage and divorce bonuses or penalties in particular cases, are the result of the combined effect of these varying approaches.

History

Under the initial version of the modern individual income tax, enacted in 1913, married couples were taxed as separate individuals. In 1930, the Supreme Court ruled that State community property laws were to be given effect for income tax purposes, which meant that, in the States with such laws, married couples could equally divide income considered community property, the split which minimizes a couple's combined tax burden in a progressive tax system. After the large increase in tax rates enacted to finance World War II, many States enacted community property laws in order to give their citizens the tax benefit of this income splitting.

To stop this community property epidemic, in 1948 Congress provided that all married couples could enjoy the benefits of income splitting by filing joint returns. Separate filing by married persons was allowed, but the loss of income splitting meant that this almost always

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led to a tax increase. Single persons were required to use the same rate schedules as married couples and received no special treatment to offset the married couples' benefit from income splitting; therefore, marriage almost always resulted in a tax reduction for married couples and divorce in a tax increase.

In 1951, Congress enacted the head-of-household rate schedule for single persons who maintain households for certain relatives. This provided a "divorce bonus" to married couples with children if they had relatively equal incomes.

In 1969, Congress enacted a special rate schedule for single persons to give them about one-half the benefit of income splitting and adjusted the head-of-household rate schedule to give these taxpayers about three-fourths of the benefit of income splitting. These changes increased the divorce bonus provided by the head-of-household rate schedule and created a "marriage penalty" when single persons with relatively equal incomes married each other.

Issues

The proper tax treatment of married couples and single persons involves judgments about equity, economic efficiency and complexity.

Equity

The first question is what should be the tax unit, the group whose income and deductions are pooled in determining tax liability. Many people believe that the tax system should be "marriage neutral"; that is, a married couple should have the same tax burden as two single persons, each of whom has the same income as one of the spouses. Many people, however, also believe that, because most married couples pool their income and spend as a unit, fairness requires that the tax burden of a married couple not depend on how their combined income is distributed between them. A third widely held proposition is that the tax system should be progressive; that is, as income rises, tax burdens should increase as a percentage of income. Many Americans, if asked, would express agreement with all three of these principles of tax equity: marriage neutrality, equal taxation of couples with equal incomes, and progressivity.

One problem with devising a satisfactory method of taxing married couples is that these three principles of tax equity are logically inconsistent. A tax system generally can have any two of them, but not all three. A progressive tax system that treats the individual, not the couple, as a tax unit preserves marriage neutrality but sacrifices equal taxation of couples with equal incomes because couples with unequal incomes would pay a larger combined tax than couples with relatively equal incomes. The present income tax sacrifices marriage neutrality, but maintains equal taxation of couples with equal incomes and progressivity. A proportional income tax could have both marriage neutrality and equal taxation of couples with equal incomes, but it would sacrifice progressivity (although some limited progressivity could be introduced through refundable per capita tax credits without violating the other two principles). Which of these three principles ought to be sacrificed is a subjective question.

A second equity issue is how the overall tax burden should be distributed between single persons, single heads of households, one-earner married couples and two-earner married couples. This too is essentially a subjective judgment. The enactment of income splitting in 1948 shifted the tax burden away from one-earner married couples and other couples with relatively unequal incomes. The special rate schedules for heads of households and for single persons shifted the burden away from these classes of taxpayers. Recent proposals to reduce the marriage penalty involve shifting the burden away from two-earner couples. Any proposal that shifts the tax burden away from one of these groups means increasing the relative burden on the others.

Efficiency

Considerations of economic efficiency dictate that tax rates be lowest on persons whose work effort would be most responsive to lower taxes. Virtually all statistical studies of the issue conclude that a wife's work effort is more responsive to reduced taxes than her husband's. Therefore, the present system of taxing both spouses' earnings at the same marginal tax rate is economically inefficient compared to a system with lower tax rates on the wife's earnings. (The marginal tax rate is the rate applicable to the next dollar of income.) However, the present system may have countervailing benefits to the extent society gains from uncompensated work performed by wives.

Complexity

Joint returns for married couples are simpler than separate returns. With separate returns, it is necessary to apportion unearned income and deductions between spouses, and there is no entirely satisfactory way of doing this. Attempting to allocate deductions and unearned income in a way that corresponds to how the couple would be taxed as two single persons would be complex and would invite manipulation of unearned income and deductions to achieve *de facto* income splitting and marriage bonuses. However, any arbitrary method of making these allocations could be considered unfair and would create its own marriage bonuses or penalties.

Alternative Proposals

Three basic proposals to change the current system have received most attention in recent years: mandatory separate filing by married couples using the same rate schedule as single persons; optional separate filing by married couples using the same rate schedule as single persons; and retention of the present system with *ad hoc* changes to reduce the marriage penalty, such as a deduction or credit for married couples based on the earnings of the spouse with the lower amount of earnings. Other suggestions, such as letting single persons use the joint return rate schedule, were popular in previous years but have not been prominently mentioned recently.

Mandatory separate filing

Under this proposal, separate filing by married couples would be mandatory or there would be no tax advantage to a joint return. This concept is embodied in H.R. 2553 (sponsored by Rep. McDonald) and

H.R. 108 (sponsored by Rep. Annunzio). If married persons were required to file separately and use the current single person's rate schedule, there would be tax increases for about 60 percent of married couples and tax cuts for the other 40 percent. Because there would be overall tax increase of between $12 and $18 billion, the rate schedule could be reduced below the current single person's rate schedule.

Any system in which separate filing was either mandatory or advantageous for many married couples would raise questions of how income (both earned income and investment income) and itemized deductions should be allocated between spouses. While these issues exist under present law, they are relevant only to the small number of married persons who file separately and are often resolved by penalizing the separate filers. There is no entirely satisfactory way of making these allocations in a system that encourage or mandates separate filing. Whatever method is adopted, however, will greatly affect the revenue impact. Some vestiges of joint filing would probably have to be maintained in provisions with phaseouts based on income; otherwise, low-income taxpayers with high-income spouses would receive tax benefits, such as the earned income credit, which were originally intended only for low-income families.

Mandatory separate filing would firmly resolve the equity question on the side of marriage neutrality, except to the extent that allocation rules for income and deductions created marriage bonuses or penalties or that vestiges of joint filing were retained. There would be a reduction in marginal tax rates on second earners. Also, there would be a shift in the tax burden away from two-earner couples and towards one-earner couples.

Optional separate filing

Under this proposal, separate filing by married couples using the single person's rate schedule would be optional. This concept is embodied in H.R. 3609 (sponsored by Rep. Fenwick), H.R. 5012 (sponsored by Rep. Moore) and S. 336 (sponsored by Sen. Mathias). The same technical issues raised by mandatory separate filing would also apply to optional separate filing, and an additional complexity would result from any tendency of married persons to compute their tax both separately and jointly to make sure they were minimizing their total tax burden.

Optional separate filing using the present single person's rate schedule would involve a tax cut of $7 to $9 billion, depending on how investment income and deductions were allocated between spouses. It would reduce marginal tax rates for second earners for those couples who elected separate filing, but not for others. It would shift the tax burden away from two-earner couples.

This proposal does not conclusively resolve the equity question. Optional separate filing would be characterized neither by marriage neutrality nor by equal taxation of couples with equal incomes. It would, however, eliminate marriage penalties.

Relief for second earners

Another group of proposals involves *ad hoc* relief for two-earner married couples, designed to reduce the marriage penalty and marginal tax rates on second earners while retaining the basic system of joint filing. Such relief could take the form of a deduction or credit equal to a percentage of the earnings of the spouse with the lower amount of earnings. A deduction of 10 percent of the first $10,000 of earnings is contained in H.R. 6203 (sponsored by Rep. Fisher), a deduction of 10 percent of the first $20,000 of earnings in S. 1247 (sponsored by Sen. Gravel) and H.R. 6822 (sponsored by Rep. Conable), and a deduction of 20 percent of the first $20,000 of earnings in S. 1877 (sponsored by Sen. Sasser). In H.R. 6822, the deduction is limited to couples where each spouse contributes at least 20 percent of the combined earned income. A credit of 10 percent of earnings, with a credit of $500, is contained in H.R. 6798 (sponsored by Rep. Patten).

A deduction or credit for second earners is one of the simplest ways to reduce the marriage penalty and the marginal tax rates on second earners. Per dollar of revenue loss, a deduction would be more effective in these respects; however, a credit gives more benefit to lower income couples than a deduction. If either a deduction or credit were adopted, the system would be characterized neither by marriage neutrality nor by equal taxation of couples with equal incomes.

Other proposals

Other proposals for resolving the married-single tax issue have been discussed in previous years, but have not been mentioned as prominently in the current debate. One suggestion is to return to the pre-1969 system by repealing the single person's rate schedule and requiring single persons to use the same rate schedule as married persons filing separate returns. This would eliminate the marriage penalty inherent in the rate schedules. However, it would shift the tax burden from both one- and two-earner married couples to single persons. The opposite proposal also has been discussed; that is, allowing single persons and heads of households to use the joint return rate schedule to reduce alleged discrimination against single persons. This is contained in H.R. 872 (sponsored by Rep. Yates). This proposal often is accompanied by suggestions for larger dependency exemptions and a deduction or credit for second earners.

Another possibility, which has received little attention, would be to reduce the marriage penalty by flattening out the tax rate schedule for single and joint returns. Byt itself, this would reduce progressivity, but there could be a tax credit equal to a flat amount per taxpayer (i.e., twice as much for a joint return as for a single return) to restore much of the progressivity lost by changing the rate schedule.

The **Chairman**. Mr. Conable, before I recognize Mr. Sunley, do you want to be recognized?

Mr. **Conable**. Yes; thank you, Mr. Chairman. I would like to make a few remarks also at the beginning of this very significant hearing, one that I think is overdue. I regret the pressure of other events has kept us from exploring this area sooner.

I am pleased that these hearings have been scheduled to focus on the comparative tax burdens imposed on married and single individuals.

Our society changes, and our tax system is continually adjusted to reflect and accommodate these changes. Today's hearing marks the fact that it is time once again to update the tax policy with respect to taxpayers' marital status. The adjustments we made in 1948 and 1969 no longer reflect today's reality.

As we will hear from our witnesses today and tomorrow, the changes in the last decade have been astounding. The major change is that most wives and mothers today are in the paid work force outside the home. For some—the lucky ones—this is a matter of choice. For most, it is a matter of economic necessity. These current realities are ignored by our tax system.

Consider some of the relevant statistics. Only one-fourth of married couples in the United States depend solely on the husband's earnings, but 51 percent depend on the earnings of both husband and wife. The median earnings for two-worker couples rose by 7 percent last year, but prices rose by 13.3 percent. A married couple, each working at the minimum wage, pays 62 percent more in taxes than an unmarried couple. As a Nation, we say we favor policies that will strengthen family life. Yet, over a million couples live together without marrying, and for a good number of them it is done to avoid paying higher income taxes. As we will hear later today, some married couples even divorce in order to reduce their taxes.

When the world is changing so fast, many of our traditional institutions are subjected to stress and underpinnings of the social fabric sometimes appear to be very fragile. It is at times like these that we ought to be especially careful that our public policies do not strain traditional institutions beyond the breaking point.

As I think the preponderance of testimony today and tomorrow will make clear, it is time for Congress to deal with the marriage penalty in our tax system. We have had hearings and task forces before, but no action. I, for one, intend to do what I can to keep it on the agenda until tangible results are achieved. It is time to bring our tax system back into line with our system of values and with the realities of today's world.

I greatly appreciate, Mr. Chairman, your holding these hearings. I think it will be a constructive step at a time when the hearings are badly needed.

The **Chairman**. Thank you, Mr. Conable.

Our first witness is the Deputy Assistant Secretary for Tax Policy, Emil Sunley, Department of the Treasury. Without objection, your full statement and supplemental materials will be included in the record.

You may proceed, sir.

STATEMENT OF EMIL M. SUNLEY, DEPUTY ASSISTANT SECRETARY FOR TAX POLICY, DEPARTMENT OF THE TREASURY

Mr. SUNLEY. Thank you, Mr. Chairman. The Treasury welcomes the opportunity to testify on the tax treatment of married couples and single individuals. This subject raises some of the most important issues in income tax policy and some of the most difficult to resolve.

The Congress and the executive branch have wrestled with these issues since the establishment of the Federal income tax in 1913. The issues involve basic questions. Is the individual or the family the appropriate unit of taxation? Should the different circumstances of a family with one earner and a family with two earners be recognized? Should the special circumstances of a single person who maintains a household for children or other persons be recognized?

As it stands today, the tax law gives rise to tax increases and tax decreases when a marriage takes place and when a marriage is dissolved by reason of divorce or death. These tax consequences add to public concern about the tax system's economic efficiency. For example, second earners among married couples and single persons are faced with greater work disincentives than are primary earners among married couples.

Tax policy has been guided by four important and widely-accepted goals in the tax treatment of the family and single individuals.

Second: Married couples with equal combined income should pay the same tax.

Third: A tax penalty should not be imposed on marriage. Two single individuals should not pay a higher tax as a result of marriage.

Fourth: A tax penalty should not be imposed on becoming or staying single. A single person should not pay more tax than another individual with equal income who is married to a spouse who has no earnings or income. Conversely, a couple should not pay higher taxes as a result of divorce.

While each of these goals is accepted as sound and fair, they conflict with one another. Any tax system will violate one or more of these goals. For example, if the second, third, and fourth goals are achieved in a tax system, the tax cannot be progressive.

Mr. Chairman, my statement provides the historic development of our tax law and how we have wrestled with these problems over a number of years. I will skip over that portion of my full statement included in the record and point out that under current law there are four different rate schedules for individual income tax and each schedule contains a zero bracket and positive rates ranging from 14 to 70 percent. These rates are summarized in table 1 of my testimony. You will see that we have almost 40 million single taxpayers and they have a zero bracket of $2,300. We also have about 46 million married couples filing jointly and they have a $3,400 zero bracket. Each of the rate schedules involves marginal tax rates from 14 to 70 percent.

Looking at the zero bracket amount, you can see that if two couples marry and only one has income, the zero bracket amount, or what had been known as the standard deduction, is increased from $2,300 to $3,400 providing a benefit for the married couple.

On the other hand, consider two individuals who are both working. Each has a $2,300 zero bracket amount. Their combined zero bracket is reduced from $4,600 if they remain single to $3,400 if they marry. That, plus the way the single and joint return rate schedules are constructed, is the basic source of the marriage penalty or the single penalty.

Under current law we have both marriage penalties and single penalties. Two wage earners who are married often pay more tax than they would if they were single and a single person often pays more tax than a married couple with the same income. The two-earner couple pays the same tax as the one-earner couple having the same income. Except for the child care credit, the law ignores the additional cost incurred in earning income in the second-earner case.

Focusing first on the marriage penalty, if two persons with independent incomes marry, they often have to pay a higher tax. For example, look at row 2 of table 2 of my testimony. If two single persons each with income of $10,000 marry, they will have combined income of $20,000. As a result, their combined tax increases from $2,774 to $3,225 for a marriage penalty of $451.

Table 2 provides other examples assuming that the income is split 50/50. However, it is not necessary that the two individual incomes be equal in order for a marriage penalty to arise. Roughly speaking, the marriage penalty affects couples where the spouse with the lower earnings contributes at least 20 percent of the combined income.

Current law also has a single penalty. A single taxpayer often pays more tax than a married couple with the same income. Single penalties are demonstrated in table 3 of my testimony.

For example, looking at the second row, a married couple with one earner has taxable income of $10,000 and then divorces and the earner continues to have taxable income of $10,000, the earner's tax increases from $1,062 to $1,387 for a single penalty of $325.

So, under current law there are both marriage penalties and single penalties. The most recent tax return data indicates that a marriage penalty is realized by a substantial number of couples filing joint returns, but by no means the majority of couples.

For tax year 1979, approximately 16 million married couples will be affected by a marriage penalty totaling $8.3 billion while 24 million couples will experience a marriage bonus of $19 billion. See table 4 of the testimony.

Let me move on, Mr. Chairman, and look at some of the basic options which we have. There must be a compromise between reducing the marriage penalty and the single penalty and this compromise is an uneasy one. The marriage penalty in particular has become one of the most widely criticized aspects of our income tax, but as long as the first two goals of the tax system, progressivity and taxing combined incomes are adhered to, the marriage penalty cannot be reduced without making the situation for single taxpayer even worse.

The administration does not favor reducing the current level of progressivity. Therefore, any approach which alleviates both the marriage penalty and the single penalty must violate the combined income goal; that is, there must be some tax differential in the tax law between one-earner and two-earner married couples.

According to a recent OECD survey, every industrialized nation with an income tax except the United States distinguishes between one-earner and two-earner couples and even in the United States the child care credit may be viewed as a distinction between one-earner couples without children and two-earner couples with children.

It is one thing, of course, to support such a distinction, and the administration does, and quite another to agree on what form it should take. Essentially, there are three basic options and these are discussed at the last portion of my testimony.

The first option is to abandon joint returns and require separate returns by married persons. This approach would also abandon head of household and surviving spouse statuses and abandon differential rate schedules for single persons and separate returns of married couples. This option would eliminate both the marriage penalty and the single penalty. Only the combined income goal would be violated as was in the case of the pre-1948 income tax.

The administrative convenience of joint returns would be obtained by allowing married couples to file their separate returns on the two parts of the same standard form as is now done in some State income tax systems.

The drawback of this option is that taxpayer compliance and tax administration would be complicated if married couples are required to file separately. There is a substantial technical problem of the assignment of income and deductions among spouses.

How should property income be assigned for tax purposes? Should it be based on ownership? If it were, it would create a real incentive to reduce tax by shifting ownership to the spouse with the least income and special rules would be needed for trusts where one spouse receives the income from the property and the other spouse retains a reversionary interest in the property.

Another possibility would be to assign the property income to the spouse with the most earned income. If it were, it would be considered unfair because property income would be taxed at higher marginal tax rates.

There are, of course, many other possibilities for assignment of property income and one is to split property income on a 50/50 basis even though it would treat property income more favorably than earned income.

There is also a question of how earnings should be assigned among spouses for tax purposes. This is a particular problem of closely held businesses and farms where couples could allocate earnings to the lower earning spouse rather arbitrarily.

A similar problem would exist with respect to the allocation of exemptions and deductions. One possibility would be to prorate the total amount of exemptions and deductions in accordance with the distribution of total income between the spouses.

Another drawback of the mandatory option is its impact on tax burdens. If mandatory separate returns were required to use the single person's rate schedule, almost all one-earner couples now receiving marriage bonuses, head of households, and surviving spouses would have tax increases and some two-earner couples would have tax increases also.

Tax increases in this approach would probably be unacceptable and alternatives need to be considered. To minimize, but not eliminate, the number of taxpayers who would have a tax increase, all taxpayers could be allowed to use the most beneficial tax rate schedule in current law, that is, the one for joint returns.

However, the revenue cost of mandatory separate returns using the joint return rate schedules would be $29.5 billion. The high revenue cost of this approach would seem to us to be a rather serious drawback.

A less costly alternative to mandatory separate returns would provide couples an option of filing jointly as under present law or filing separate returns as single persons. Head of households and surviving spouses would continue to use their present rate schedules.

This option is a more simple and straightforward way to eliminate the marriage penalty. Its drawback is that it would not eliminate or reduce the marriage bonus or single penalty. Under this approach, those benefiting from the marriage bonus, one-earner couples and two-earner couples with a low earner, would not be made worse off except in a relative sense. They would generally continue to file joint returns and take advantage of the marriage bonus.

Optional separate returns has the same drawback of mandatory separate returns, namely, in the assignment of income and the allocation of deductions. Additional optional separate returns could seriously complicate taxpayer compliance since many couples would have to compute taxes two ways to determine which way minimizes taxes.

The revenue cost of optional separate returns treated as single persons would be $8.3 billion, which is considerably less than the $29.5 billion revenue cost of mandatory separate returns with the joint rate schedule.

A third alternative is a special deduction or exclusion on joint returns. This deduction or exclusion would be based on the earnings of the lower earning spouse. It would be a simpler option, in terms of the compliance and administration, than optional separate returns.

A deduction from adjusted gross income of some proportion of the lower earning spouse's income would be allowed and, depending on the deduction levels, this scheme would partially alleviate the marriage penalty. It would only give relief among two-earner couples. It would not alleviate any marriage penalty among two-earner couples resulting from investment income.

The drawback of this option is that some couples would receive tax relief in excess of their marriage penalty under present law. Therefore, an evaluation of this approach should include examination of how the total revenue loss is allocated between reduction of the marriage penalty and increase of the marriage bonus or single penalty.

Under this option, consider for illustrative purposes a deduction equal to 10 percent of the first $20,000 of the lower earner's income. The revenue cost would be $3.5 billion. About 79 percent of the total cost would be allocated to reducing the marriage penalty and about 21 percent would be allocated to couples who already have a marriage bonus and would, therefore, increase the marriage bonus.

The 10-percent deduction would eliminate about 34 percent of the marriage penalty under present law. It is noteworthy that the bulk of the lower earner spouse's income falls well below the assumed $20,000 ceiling. Consequently, a higher ceiling above $20,000 would have no significant effect either on the option's cost or on reduction of the marriage penalty.

The number of returns experiencing a marriage penalty and the penalty amount would decline at each income level under this approach. Since the cost would also include tax relief in excess of the marriage penalty, it may be more equitable and less costly to target the relief more specifically at two earner couples with a marriage penalty.

And, the Conable bill does just that. It is essentially the same 10-percent deduction option, but it would be available only to two-earner couples if the earnings of the lower earning spouse is at least 20 percent of the total earnings of the couple. The revenue cost of the Conable bill would be $3.1 billion and about 87 percent of the cost would be allocated to reducing the marriage penalty and about 32 percent of the marriage penalty would be eliminated.

In conclusion, the administration believes that high priority should be given to reducing both the marriage and single penalties when the individual income tax reductions next are made. The administration is not prepared at this time to recommend one of the three basic approaches. A strong case can be made for each approach.

The first two involve more basic structural changes than the third. Yet, it may be appropriate if there is a general consensus that the family no longer should be the basic unit of taxation. The third option involves less complexity, but may be considered partially corrective.

The choice among the approaches may very well depend on which one receives general acceptance. Mr. Chairman, these hearings provide a good opportunity to gage the views of interested groups. That completes my statement.

[The prepared statement follows:]

STATEMENT OF EMIL M. SUNLEY, DEPUTY ASSISTANT SECRETARY OF THE TREASURY (TAX POLICY)

Mr. Chairman, and members of this committee, the Treasury welcomes the opportunity to testify on the tax treatment of married couples and single individuals. This subject raises some of the most important issues in income tax policy and some of the most difficult to resolve. The Congress and the Executive Branch have wrestled with these issues since the establishment of the Federal income tax in 1913. The issues involve basic questions: Is the individual or the family the appropriate unit of taxation? Should the different circumstances of a family with one earner and a family with two earners be recognized? Should the special circumstances of a single person who maintains a household for children or other persons be recognized?

As it stands today, the tax law gives rise to tax increases and tax decreases when a marriage takes place and when a marriage is dissolved by reason of divorce or death. These tax consequences add to public concern about the fairness of the tax system. They also create concerns about the tax system's economic efficiency. For example, second earners among married couples and single persons are faced with greater work disincentives than are primary earners among married couples.

EQUITY CONSIDERATIONS

Tax policy has been guided by four important and widely-accepted goals in the tax treatment of the family and single individuals.

First, the income tax should be a progressive tax based on ability-to-pay. The average tax rate should rise as income rises. A single individual with the same income as two individuals should pay more tax because that individual has more ability-to-pay. For example, more tax should be collected from a single person earning $20,000 than should be collected from two single persons earning $10,000 each.

Second, married couples with equal combined incomes should pay the same tax. No distinction should be made among married couples on the basis of how much of their combined income is earned by each spouse. For example, all married couples with total incomes of $20,000 should pay the same tax, regardless of whether one spouse earns all of the income or each spouse earns half or differing portions.

Third, a tax penalty should not be imposed on marriage. Two single individuals should not pay a higher tax as a result of marriage. For example, a man and woman earning $10,000 each should both pay the same tax whether they are married or single.

Fourth, a tax penalty should not be imposed on becoming or staying single. A single person should not pay more tax than another individual with equal income who is married to a spouse who has no earnings or income. Conversely, a couple should not pay higher taxes as a result of divorce. For example, a married couple with both spouses earning $10,000 each should pay the same tax as two single persons both earning $10,000.

While each of these goals is accepted as sound and fair, they conflict with one another. Any tax system will violate one or more of these goals. For example, if the second, third, and fourth goals are achieved in a tax system the tax cannot be progressive.

1. Historical development of current law

The history of the tax treatment of the family and single person provides ample evidence of this conflict. The conflict is at the root of the issues under examination in present tax law.

a. *Rates.*—Between 1913 and 1948, the tax law recognized the individual as the unit of taxation. The tax system thus conformed with all the goals except the second, which requires the taxing of the combined incomes of the married couple. Consequently, couples with the same combined income had different tax liabilities.

Different treatment of couples with the same combined income was exacerbated by legal reallocation of property and income in "community property" States and by the ability of couples in other States to minimize taxes by reallocating property income. In 1948, the law was changed to allow the combining of incomes and "income splitting", that is, each spouse was presumed to have an equal amount of income whether or not that was the actual case. However, as a consequence of that decision, single taxpayers were required to pay more tax than most married couples with the same income. Looked at another way, a marriage bonus was introduced into the tax system in 1948.

The single penalty introduced in 1948 was most conspicuous in the case of single taxpayers with children—typically a widowed or divorced parent. In 1951, therefore, a special category of head of household was introduced. Tax rates for heads of household were set halfway between those of single persons and married couples. This was a compromise between the single individual's tax and the married couple's tax.

After 1948, there was a substantial tax increase for many earners who were made single due to the death of a spouse; for these taxpayers, the benefit of income splitting was immediately lost. Therefore, the law was changed in 1954 to allow a surviving spouse who maintains a household for a dependent child to continue to obtain the benefits of income splitting for two years after the year of death of the spouse. After that period, the surviving spouse followed normal rules to determine whether he or she would file as a "head of household" or a single person.

A continuing concern about the single penalty (or the marriage bonus) led to enactment of lower rates for single persons effective in 1971. Since the rates for married couples were not changed, the benefit of income splitting was effectively eliminated at most income levels. A substantial marriage penalty was introduced;

many two-earner families could pay lower taxes if they were single. To prevent two-earner married couples from taking advantage of the new single person rates, married couples were required to use the pre-1971 rate schedule for single persons if they filed separate returns.

The concern about the substantial marriage penalty introduced by the 1971 legislation led to a small reduction of the marriage penalty in 1979 when new rate schedules were introduced.

These actions since 1913 reflect decisions on the unit of taxation and the applicable tax rate schedules. The issue is even more complicated because of actions with respect to other Code provisions, such as the standard deduction, the low-income allowance, the zero bracket amount, and the child care deduction and credit.

b. *Other code provisions.*—Prior to the Tax Reduction Act of 1975, two single persons could claim two standard deductions or low-income allowances. If they married, however, they could claim only one. In the 1975 legislation, the low-income allowance and the maximum standard deduction allowed married taxpayers was made higher for married couples filing jointly than for single individuals. This reduced the marriage penalty but it also increased the single penalty. A single individual who married another individual with no income claimed a larger standard deduction than the amount claimed as a single individual.

In 1977, legislation repealed the standard deduction and introduced the zero bracket amount in all rate schedules. It provided that a certain amount of taxable income is subject to a tax rate of zero percent. The enactment of the zero bracket amount represented a compromise between reducing the marriage penalty and reducing the single penalty. The zero bracket amount currently is $2,300 for a single person (and head of household) and $3,400 for a married couple (and a surviving spouse). To the extent that a married two-earner couple has a smaller zero bracket ($3,400) amount than twice the single earners' amount ($4,600) there is a marriage penalty. To the extent that a married one-earner couple has a larger zero bracket amount ($3,400) than that of a single person ($2,300), there is a single penalty.

In all of these actions—defining the tax unit, prescribing appropriate rate schedules, providing zero bracket amounts—tax policy (since 1948) has accepted the first two goals—progressivity and the taxation of combined incomes of married couples—and has attempted to compromise the inconsistency between the marriage penalty and the single penalty.

As a result of these actions the Internal Revenue Code contains four different rate schedules for the individual income tax. One is for single persons, one is for married couples filing joint returns, one is for married persons filing separate returns, and one is for single persons who qualify as heads of households. Each schedule contains a "zero bracket" and positive rates ranging from 14 to 70 percent. (See Table 1.)

TABLE 1.—SUMMARY OF THE 1979 RATE SCHEDULES

Schedule in form 1040 instructions and taxpayers covered	Number of returns using schedule in 1979 (millions)[1]	Amount of zero bracket in 1979
Schedule X: Single persons other than heads of households	29.6	$2,300
Schedule Y:		
Part 1—Joint returns of married couples, and certain surviving spouses	45.7	3,400
Part 2—Separate returns of married persons	1.4	1,700
Schedule Z: Unmarried heads of households		2,300

[1] Total individual Returns, 93,000,000.

Some limited recognition has also been given in past legislation to certain additional costs of earning income in the case of two-earners (and also a single person) who have children. In the 1954 legislation, a limited child care deduction was made available to married couples and single persons with incomes less than $6,000. The deduction was expanded in both the 1971 and 1975 legislation, and in the 1976 legislation, the deduction was replaced with a credit equal to 20 percent of the first $2,000 of child care expenses for one child and the first $4,000 of such expenses for two children. The income limit also was removed. The child care credit can be viewed as a possible offset for the marriage penalty in the case of two-earner families with children. This is particularly true since the credit is not strickly limited to child care. The housekeeper often cleans the house and does the laundry. For a two-earner family without children these same costs may be incurred in order for the second earner to enter the labor force, but the costs receive no special tax benefit under present law.

That is briefly the legislative history on attempts to resolve the issues. Let's look more specifically at present law and at the dimensions of the problem.

2. Present law

The current tax treatment reflects the progressive tax and generally taxes the combined income of husband and wife without distinction between one-earner and two-earner families, except for the child care credit. Both marriage penalties and single penalties exist in present law. Two wage earners who are married often pay more tax than they would if they were single. A single person often pays more tax than a married couple with the same income. The two-earner couple pays the same tax as the one-earner couple having the same total income. Except for the child care credit, the law ignores the additional costs incurred in earning income in the two-earner case.

a. ***Marriage penalty.***—If two persons with independent incomes marry, they often have to pay a higher tax. For example, assume two persons each have taxable incomes of $15,000 (after subtracting their exemptions) and assume they do not itemize their deductions. If they file as single individuals, they each must pay $2,605 in tax. Their combined tax is therefore $5,210. If they marry and file a joint return, their taxable income is $30,000, and their tax (from schedule Y) is $6,238. In this case, their marriage penalty is $1,028. (See Table 2 for examples of marriage penalties for selected levels of taxable income.)

TABLE 2.—MARRIED PENALTIES IN 1979

If 2 single people, each with taxable incomes of—	Marry, and have a combined taxable income of—	Their combined tax increases from—	To—	For a marriage penalty of—
$5,000	$10,000	$844	$1,062	$218
10,000	20,000	2,774	3,225	451
15,000	30,000	5,210	6,238	1,028
20,000	40,000	8,354	10,226	1,872
30,000	60,000	15,924	19,678	3,754

Note.—Taxable income is total income minus exemptions of $1,000 per person. Calculations assume that the taxpayers do not itemize their deductions. Assumes no children.

However, it is not necessary that the two individual incomes be equal in order for a marriage penalty to arise. Suppose that the two persons have taxable incomes of $22,000 and $8,000, adding up to the same combined taxable income of $30,000. Filing as single persons, their respective taxes are $4,857 and $977, for a total tax of $5,834. If they marry and file jointly, their tax is $6,238, for a marriage penalty of $404. If the income is divided more unevenly, the marriage penalty will be smaller, or the couple may even save tax by marriage. Roughly speaking, the marriage penalty affects couples where the spouse with the lower earnings contributes at least 20 percent of the combined income.

Married persons may file separately if they wish, but they must use the highest of the four rate schedules, and other special provisions occur throughout the Code to prevent them from saving tax in this way. As a consequence, the option for a married couple to file separate returns is not a defense against the marriage penalty.

b. ***Single penalty.***—A single taxpayer often pays more tax than a married couple with the same income. For example, a single person with a taxable income of $15,000 pays $2,605 tax. But if a married couple has the same taxable income, even if it is all earned by one spouse, their tax is $2,055. In this case, the single person pays 27 percent more tax. (See Table 3 for examples of single penalties at selected levels of taxable income.)

TABLE 3.—SINGLE PENALTIES IN 1979

If married couple with one earner and with taxable income of—	Divorces and the earner continues to have taxable income of—	The earner's tax increases from—	To—	For a single penalty of—
$5, 000	$5, 000	$224	$422	$198
10, 000	10, 000	1, 062	1, 387	325
15, 000	15, 000	2, 055	2, 605	550
20, 000	20, 000	3, 225	4, 177	952
30, 000	30, 000	6, 238	7, 962	1, 724

Office of the Secretary of the Treasury, Office of Tax Analysis.

Note: "Taxable income" is total income minus exemptions of $1,000 per person. These calculations assume that the taxpayers do not itemize their deductions.

These examples of the marriage and single penalties only take account of the differing rate schedules and zero bracket amounts. There are a large number of other provisions that impact on the tax treatment of married and single people. In some cases, single individuals and married couples filing jointly are subject to the same dollar limitations. Examples are the $3,000 capital loss limitation and the maximum expenditures qualifying for the residential energy credit. In other cases, such as the interest and dividend exclusion, the limitation for married couples filing jointly is twice that of single individuals. There are also cases where the limitation for married couples filing jointly are higher than that for single individuals but not twice as high. Examples includes the maximum base and the beginning of the income phase out for the credit for the elderly. Also, in order to claim the earned income credit, the credit for the elderly, and the disability income exclusion, married couples generally are required to file jointly. These credits are phased out based on combined income.

ECONOMIC CONSIDERATIONS

The current tax treatment of the second earners (or secondary investors) among married couples tends to distort decisions about labor market entry choices, about choices among occupations, about investment in education and training, and about investment in risk capital. This follows from the fact that second earners under the present system of combined income on joint returns face higher marginal tax rates than the rates faced by their spouses who are primary earners or the rates faced by single persons. The argument can be made that the marginal tax rates of secondary earners—typically women—should be lower not higher than that of single women and married men. It is generally agreed that married women have substantial discretion over their labor market activity, that is, they have a substantially higher elasticity of supply of labor than do single persons or married men. Thus, economic efficiency would be served if the marginal tax rates of secondary earners were lower than present rates. Economic efficiency in this sense means a reduction in the economic loss of society created by this distortion in labor force activity of married women.

DIMENSIONS OF THE PROBLEM

The marriage penalty and single penalty have become more serious issues as a result of increasing rates of divorce and cohabitation of unmarried couples, and the two-earner married couple problem also has become a more serious issue as a result of increasing labor force participation by wives.

The most recent tax return data indicates that a marriage penalty is realized by a substantial number of couples filing joint tax returns. For the tax year 1979, approximately 16 million will be affected by a marriage penalty totalling $8.3 billion, while 24 million will experience a marriage bonus of $19 billion.[1] (See Table 4.)

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[1] In making these estimates, it is assumed that exemptions and deductible expenses are allocated in proportion to each spouse's income. However, one spouse may itemize while the other spouse may use the "zero bracket amount" but the latter's deductible expenses are not assumed to be shifted to the itemizing spouse. Had it been assumed that each couple engages in tax minimization by allocating deductions, the number with a marriage penalty will be an estimated 18 million and the penalty will amount to an estimated 13 billion at 1979 income levels.

TABLE 4.—DISTRIBUTION OF MARRIAGE PENALTY AND MARRIAGE BONUS BY INCOME CLASS UNDER PRESENT LAW[1]

[1979 law, 1979 income levels]

Expanded income class	Marriage penalty: Number of returns (thousands)	Marriage penalty: Amount (millions)	Marriage penalty: Average penalty marriage	Marriage bonus: Number of returns (thousands)	Marriage bonus: Amount (millions)	Marriage bonus: Average marriage penalty
Less than $10,000	655	$83	$124	4, 120	$1, 063	$258
$10,000 to $15,000	2, 058	437	212	3, 940	1, 439	365
$15,000 to $20,000	3, 207	908	283	3, 650	1, 809	496
$20,000 to $30,000	6, 416	2, 350	366	6, 196	4, 632	748
$30,000 to $50,000	2, 867	2, 465	860	4, 412	5, 755	1, 304
$50,000 to $100,000	527	1, 179	2, 235	1, 297	3, 303	2, 548
$100,000 to $200,000	123	494	4, 018	185	764	4, 127
$200,000 and over	54	424	7, 909	26	395	15, 207
Total	15, 906	8, 340	524	23, 827	19, 160	804

[1] Dependent exemptions and deductible expenses are allocated to each spouse in proportion to each spouse's income and not in accordance with tax minimizing behavior.

Note: Details may not produce totals due to rounding.

Labor force participation rates of wives of married couples since 1940 demonstrate the substantial growth of two-earner families. (See Table 5.) The participation rate by wives increased more than 300 percent since 1940. The one-earner couple is no longer the predominant case. According to Census data, in 1940 the one-earner couple accounted for almost two-thirds of all households. In 1978, the one-earner couple accounted for only about one-third.

TABLE 5.—*Labor force participation rates of wives of married couples, 1940–78*

Date:	*Participation rates (percent)*
1940	14. 7
1950	23. 8
1960	30. 5
1970	40. 8
1971	40. 8
1972	41. 5
1973	42. 2
1974	43. 0
1975	44. 4
1976	45. 0
1977	46. 6
1978	47. 6

SOURCE: U.S. Bureau of Labor Statistics.

BASIC OPTIONS

The compromise between reducing the marriage penalty and the single penalty is always an uneasy one. The marriage penalty, in particular, has become one of the most widely criticized aspects of our income tax. But as long as the first two goals—progressivity and taxing combined income—are adhered to, the marriage penalty cannot be reduced without making the situation for single taxpayers even worse.

The Administration does not favor reducing the current level of progressivity. Therefore, any approach which alleviates both the marriage penalty and the single penalty must violate the combined income goal, that is, there must be tax differential in the tax law between one-earner and two-earner married couples.

Critics of the combined income goal argue that an economic difference justifies such a distinction: one-earner couples have the benefit of a full-time homemaker. Although the homemaker's services in the home are not measured in dollars, they do increase a couple's economic well-being and ability-to-pay. Two-earner couples do not have that advantage, and, arguably, this should result in a lower tax

liability. According to a recent OECD survey, every industrialized nation with an income tax, except the United States, distinguishes between one-earner and two-earner couples, and even in the United States, the child care credit may be viewed as a distinction between one-earner couples without children and two-earner couples with children. It is one thing, of course, to support such a distinction and quite another to agree on what form it should take.

1. Abandon joint returns; require separate returns by married persons

One option is to abandon joint returns and income splitting and to require separate returns by married persons. This approach would also abandon head of household and surviving spouse statuses and abandon differential rate schedules for single persons and separate returns of married couples. Incidentally, most experts agree that Congress can require that each married person pay tax on his or her own income, determined without regard to State community property laws.

This option would eliminate both the marriage penalty and the single penalty. Only the combined income goal would be violated, as was the case in the pre-1948 income tax. The administrative convenience of joint returns could be retained by allowing married couples to file their "separate" returns on two parts of the same standard form, as is now done in some State income tax systems.

The drawback of this option is that taxpayer compliance and tax administration would be complicated if married couples are required to file separately. There is the substantial technical problem of the assignment of income and deductions among spouses.

How should property income be assigned for tax purposes? Should it be based on ownership? If it were, it would create a real incentive to reduce tax by shifting ownership to the spouse with the least income. Special rules would be needed for trusts where one spouse receives the income from a property and the other spouse retains a reversionary interest in the property. Should ownership be assigned to the spouse with the most income? If it were, it would be considered unfair because property income would be taxed at higher marginal tax rates. There are, of course, many other possibilities for assignment of property income. One possibility is to split property income on a 50/50 basis, even though it would treat property income more favorably than earned income.

How should earnings be assigned among spouses for tax purposes? It appears best to assign such income on the basis of actual earnings of the spouses, even though families engaged in closely-held businesses and farms, could allocate earnings to a lower earning spouse rather arbitrarily.

A similar problem would exist with respect to allocation of exemptions and deductions. One possibility would be to prorate the total amount of exemptions and deductions in accordance with the distribution of total income between the spouses.[2]

Another drawback of the mandatory option is its impact on tax burdens. Although the marriage and single penalties now created by differential rate schedules would be eliminated, tax burdens of individual taxpayers in terms of tax increases or tax decreases would depend on the rate schedule chosen. For example, if mandatory separate returns were required to use the current single person's rate schedule (and if heads of households and surviving spouses were also required to do so), almost all one-earner couples now receiving marriage bonuses, heads of households, and surviving spouses would have tax increases and some two-earner couples would have tax increases also. On the other hand, many two-earner families would have tax reductions. The tax increases in this approach would probably be unacceptable and other alternatives need to be considered.

To minimize the number of taxpayers who would have a tax increase, all taxpayers could be allowed the use of the most beneficial tax rate schedule in the law—that is the one for joint returns. The revenue cost of mandatory separate returns using the current joint return rate schedule would be $29.5 billion. (See Table 6.) But the high revenue cost of mandatory separate returns would be a serious drawback.

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[2] It should be noted that the revenue estimates for this option and others which follow assume, where necessary, the 50/50 assignment rule for property income, the actual earnings rule for earned income, and the prorated allocation of exemptions and deductions according to total income.

2. Optional separate returns

A less costly alternative to mandatory separate returns would be to provide couples an option of filing jointly, as under present law, or filing separate returns as single persons. Heads of households and surviving spouses would continue to use their present rate schedules.

This option is a simple and straightforward way to eliminate the marriage penalty. Its drawback is that it would not eliminate or reduce the marriage bonus (or single penalty). Under this approach, those benefitting from the marriage bonus (one-earner couples and two-earner couples with a low earner) would not be made worse off, except in a relative sense. They would generally continue to file joint returns to take advantage of the marriage bonus.

Optional separate returns has the same drawback of mandatory separate returns, namely in the assignment of income and allocation of deductions. In addition, optional separate returns could seriously complicate taxpayer compliance since many couples would have to compute taxes two ways to determine which way minimizes taxes.

The revenue cost of optional separate returns treated as single persons would be $8.3 billion. (See Table 6.)

TABLE 6.—REVENUE EFFECTS OF ALTERNATIVES REDUCING MARRIAGE PENALTY AND REDUCTION IN MARRIAGE PENALTY[1]

[1979 law, 1979 levels; in billions of dollars]

Item	Mandatory separate returns; joint return rates for all taxpayers	Optional separate returns; single person rates	2-earner couples; deduct 10 percent of 1st $20,000 earnings of lowest earning spouse	Conable bill H.R. 6822
Current law marriage penalty	8.3	8.3	8.3	8.3
Cost of alternative:				
Married couples:				
Reduction in marriage penalty	8.3	8.3	2.8	2.7
Increase in marriage bonus	9.7		.7	.4
Heads-of-households	1.2			
Single individuals	10.2			
Total cost of alternative	29.5	8.3	3.5	3.1
Remaining marriage penalty	0	0	5.6	5.7
Percentage reduction in marriage penalty	100.0	100.0	34.0	32.0

[1] Dependent exemptions and deductible expenses are allocated to each spouse in proportion to each spouse's income and not in accordance with tax minimizing behavior.

Note: Details may not add to totals due to rounding.

The Fenwick bill, H.R. 3609, essentially follows this approach. However, the bill allocates property income on the basis of ownership and therefore would provide a tax minimization incentive for the high earning spouse to transfer property to the low earning spouse. The implication of this feature should be carefully considered in view of the bill's intent to remove a tax bias against marriage. Is it appropriate to introduce a tax bias to influence a couple's decision on who should have title to property?

The bill would also introduce a serious tax bias with respect to itemized deductions. It would not allocate deductions according to income but would allocate each itemized deduction to the spouse who actually makes the payment. Thus, married couples would have to decide continuously during the tax year which one should write the check for say, the monthly mortgage payment, the charitable contribution, the doctor's payment, and so forth. This would carry tax planning too far. Allocation of itemized deductions according to income would appear to be simpler and more rational.

3. Special deduction or exclusion on joint returns

If joint returns in their present form are preferred, it would still be possible to distinguish between one-earner and two earner couples, by allowing a special deduction (or credit) based on the earnings of the second earner. It would be a simpler option in terms of compliance and administration than optional separate returns. A deduction from adjusted gross income of some portion of the lower earning spouse's income would be allowed. Depending on the deduction levels, this scheme would partially alleviate the marriage penalty. It would only give relief among two-earner couples. It would not alleviate any marriage penalty among two-earner couples resulting from investment income.

The drawback of this option is that some couples would receive tax relief in excess of their marriage penalty under present law. Therefore, an evaluation of this approach should include examination of how the total revenue loss should be allocated between reduction of the marriage penalty and increase of marriage bonus or single penalty.

Under this option, consider the illustrative purposes of a deduction equal to 10 percent of the first $20,000 of the lower earner's income. The revenue cost would be $3.5 billion. (See Table 6.) About 79 percent of the total cost would be allocated to reducing the marriage penalty and about 21 percent would be allocated to increasing the marriage bonus. The 10 percent deduction would eliminate about 34 percent of the marriage penalty under present law. It is noteworthy that the bulk of the lower earning spouses' income falls well below the assumed $20,000 ceiling. Consequently, a higher ceiling above $20,000 would have no significant effect either on the option's cost or on reduction of the marriage penalty.

The number of returns experiencing a marriage penalty and the penalty amount would decline at each income level under this approach. (See Table 7.) Since the cost would also include tax relief in excess of the marriage penalty, it may be more equitable and less costly to target the tax relief more specifically at two-earner couples with a marriage penalty.

TABLE 7.—DISTRIBUTION OF MARRIAGE PENALTY UNDER PRESENT LAW AND UNDER 2-EARNER OPTION TO DEDUCT 10 PERCENT OF THE 1ST $20,000 EARNED BY LOWEST EARNING SPOUSE BY INCOME CLASS[1]

[1979 law, 1979 income levels]

	Marriage penalty under present law			Marriage penalty remaining under the option		
Expanded income class	Number of returns (thousands)	Amount (millions)	Average marriage penalty	Number of returns (thousands)	Amount (milions)	Average marriage penalty
Less than $10,000	655	$83	$124	561	$65	$116
$10,000 to $15,000	2,058	437	212	1,831	312	170
$15,000 to $20,000	3,207	908	283	2,584	589	228
$20,000 to $30,000	6,416	2,350	366	4,025	1,233	306
$30,000 to $50,000	2,867	2,465	860	2,034	1,489	732
$50,000 to $100,000	527	1,179	2,235	485	996	2,053
$100,000 to $200,000	123	494	4,018	120	461	3,839
$200,000 and over	54	424	7,909	53	415	7,728
Total	15,906	8,340	524	11,692	5,560	476

[1] Dependent exemptions and deductible expenses are allocated to each spouse in proportion to each spouse's income and not in accordance with tax minimizing behavior.

Note: Details may not produce totals due to rounding.

The Conable bill, H.R. 6822, does just that. It is essentially the same 10 percent deduction option. But it would be available only to two-earner couples if the earnings of the lower earning spouse is at least 20 percent of the total earnings of the couple.

The revenue cost of the Conable bill would be $3.1 billion. (See Tables 6 and 8.) About 87 percent of the cost would be allocated to reducing the marriage penalty and about 32 percent of the marriage penalty would be eliminated.

TABLE 8.—DISTRIBUTION OF MARRIAGE PENALTY UNDER PRESENT LAW AND UNDER CONABLE BILL (H.R. 6822) TO DEDUCT 10 PERCENT OF THE 1ST $20,000 EARNED BY LOWEST EARNING SPOUSE IF THE SPOUSE'S EARNINGS ARE 20 PERCENT OR MORE OF TOTAL INCOME OF 2-EARNER COUPLES [1]

[1979 law, 1979 income levels]

Expanded income class	Marriage penalty under present law			Marriage penalty remaining under Conable bill (H.R. 6822)		
	Number of returns (thousands)	Amount (millions)	Average marriage penalty	Number of returns (thousands)	Amount (millions)	Average marriage penalty
Less than $10,000	655	$83	$124	$561	$65	$116
$10,000 to $15,000	2,058	437	212	1,858	313	168
$15,000 to $20,000	3,207	908	283	2,690	601	223
$20,000 to $30,000	6,416	2,350	366	4,292	1,256	293
$30,000 to $50,000	2,867	2,465	860	2,133	1,509	707
$50,000 to $100,000	527	1,179	2,235	511	1,016	1,989
$100,000 to $200,000	123	494	4,018	123	473	3,854
$200,000 and over	54	424	7,909	54	420	7,829
Total	15,906	8,340	524	12,222	5,654	463

[1] Dependent exemptions and deductible expenses are allocated to each spouse in proportion to each spouse's income and not in accordance with tax minimizing behavior.

Note: Details may not produce totals due to rounding.

CONCLUSION

The Administration believes that high priority should be given to reducing both the marriage and single penalties when the individual income tax reductions next are made. The Administration, however, is not prepared at this time to recommend one of the three basic approaches—mandatory separate returns, optional separate returns, or a special deduction or credit. A strong case can be made for each approach. The first two involve more basic structural changes than the third. Yet they may be appropriate if there is a general consensus that the family should no longer be the basic unit of taxation. The third option involves less complexity but may be considered only partially corrective. The choice among the approaches may very well depend on which one receives general acceptance, and these hearings provide a good opportunity to gauge the views of interested groups.

The CHAIRMAN. Thank you, Mr. Secretary.

I might say that today, as part of a new tax restructuring bill that I have introduced, I am including a provision reducing the marriage penalty that follows the third alternative. This, in my judgment, from the point of view of simplification and understanding, is about the only option we have at this point.

But, the hearings, I am sure, will bring us testimony on that, and hopefully we can come to some conclusion as to the right way to go. One of the difficulties, of course, is that it is an expensive package.

I noticed that on the third alternative you have a $3.5 billion cost. We estimate that as of 1981 that would be about $5 billion. Do you have any variance from that?

Mr. SUNLEY. For 1981?

The CHAIRMAN. Yes.

Mr. SUNLEY. These estimates are for 1979. So, that may explain most of the difference.

The CHAIRMAN. We have an estimate of $5 billion in 1981. Do you have any estimate on the other two approaches?

Mr. SUNLEY. Yes; if you went to the mandatory separate returns using the joint return rates for all taxpayers, and this is shown in table 6, the total revenue cost would be $29.5 billion. Of that, $8.3 billion would be used in reducing the marriage penalty of couples and $9.7 billion would go to increasing the marriage bonus of married couples and the remaining about $11.4 billion would go to head of households and single individuals.

Obviously, if you just had optional separate returns it would only pay them to elect it if they had a marriage penalty. The revenue cost would be reduced to $8.3 billion. But, then there would be no tax reduction for single individuals or head of households. The deduction approach or credit approach of some percent based on the lesser earner's income can obviously be tailored to fit various revenue targets. Ten percent on the first $20,000 of that person's earnings would be about $3.5 billion at 1979 income levels.

The CHAIRMAN. Thank you. Mr. Conable.

Mr. CONABLE. Mr. Chairman, I am going to engage in a little political colloquy with Mr. Sunley. I know he says, "This subject raises some of the most important issues in income tax policy" and I note also he doesn't take a position on it. It reminds me somewhat of the budget situation where the President said he wanted to cut a certain amount of money, but that he would detail it after the primaries.

Will you be taking a position on this after the primaries are over, Mr. Sunley?

Mr. SUNLEY. I would assume that the next time the administration recommends a significant cut in individual income taxes and some progress on reducing the marriage penalty could be worked into the package, we would like to include a proposal.

Mr. CONABLE. I want to encourage the inclusion of a proposal at some point. I note that the Democratic platform in 1967 said: "We will eliminate tax inequities that adversely affect individuals on the basis of sex or marital status."

In an interview, President Carter said:

> I would strongly recommend consideration be given to an income tax credit for families with two wage earners and single persons who have family responsibilities. These revisions would make the present income tax structure more equitable for married and unmarried persons.

Later this morning we will hear from a member of the administration's Interdepartmental Task Force on Women. They reported last September and concluded: "The best solution would be to tax every individual's own income on the same rate schedule regardless of marital status."

There is a certain amount of confusion, perhaps resulting in this strong position you have taken before us this morning. We are grateful for your analysis. I think it can provide the basis for some discussion and decision here by the Congress.

But for a system that depends heavily on Executive leadership, we are left with a certain degree of wallowment at this point, and I am distressed.

Having expressed my distress, I will now subside into surly silence.

The CHAIRMAN. Would the gentleman yield?

Mr. CONABLE. Yes.

The CHAIRMAN. It would be only fair, though, to say that the administration didn't call for these hearings.

Mr. CONABLE. No; I am surprised in view of the statements I read.

The CHAIRMAN. The chairman of the Ways and Means Committee called for the hearings and has taken a position.

Mr. CONABLE. Mr. Chairman, I honor you. I wish you were President.

The CHAIRMAN. I didn't want you to go that far. Mr. Fisher.

Mr. FISHER. Thank you, Mr. Chairman. I have one of the bills that has been introduced on this subject and I would like to get your view of it and ask questions. It is a very simple bill. It gives married couples a tax deduction of 10 percent of the lower spouses income with a maximum of $1,000.

In choosing that, I have been guided by three precepts:

First: I want to do something that would give some real meaningful relief to the married couples who feel they are the victims of a penalty.

Second: I have tried to avoid creating other inequities.

Third: I have held it so the revenue loss is not too great out of respect for the fiscal and budgetary situation the country is now in.

And this is what I have come out with. It is not too much different, I daresay, from what the chairman and Mr. Conable have put forward. It follows your third pathway. I would like to get your reaction to this proposal.

Mr. SUNLEY. Mr. Fisher, in my testimony I try to point out that that third approach is clearly the simplest one in terms of what other changes would have to be made throughout the whole income tax and how one would have to handle a lot of other very complex issues.

I think Mr. Conable pointed out that at one point President Carter expressed a preference to go essentially your route, a deduction for the lesser-earning spouse. On the other hand, the Intergovernmental Task Force came out for the separate-return approach.

We need to know: Is there really a consensus on what is right? Once a consensus develops to go one way or the other, we can probably solve the technical problems that are inherent in these various approaches.

Mr. FISHER. If I could interject, I think we probably could find wide consensus on the three or four general precepts to follow. Where we come apart is how to translate that into precise changes in the tax code. I would hope that, if we can agree on the general directions we wish to go, we don't fall apart on the precise technique for doing it. So——

Mr. STARK. Would the gentleman yield?

Mr. FISHER. Yes.

Mr. STARK. I am curious there. As I understand the problem—and I don't know if Mr. Sunley and the gentleman from Virginia would agree—it is a teeter-totter and we can't have both ends in the air at the same time. So we have to rank groups of people. And I have tried to do so just as I sit here this morning.

Let me just try it on the gentleman from Virginia. If we are going to give tax breaks or penalties, then we ought to have some social purpose. I am not sure I actually think these are mine but I think they might get the most votes in a referendum; that the people who ought to have the highest tax break are the one-earner couples with chi dren, and then the second highest tax break ought to go to one-earn couples on the theory that jobs are scarce and that if only one of tw people is using up a job we ought to give them a break. Third, it woul be married couples and, fourth, unmarried couples. I don't know; tha seems to me a list of priorities.

Mr. Fisher. That is an interesting approach, and that probabl would clarify things if we could find consensus on priorities or group that should be given first attention.

I might say one other thing: That I realize the time to really enac one of these bills is when we are thinking of a general tax reduction which isn't right now as far as I am concerned. But the hearings ar timely so we sort these things out.

I hope that if and when we do come to general tax reduction, w will really consider trying to incorporate some reform or improvements at that time. Legislation to deal with the marriage penalty tax is one reform that I would put near the top of my list. Thank you, Mr. Chairman.

The Chairman. Thank you.

Mr. Corman. Mr. Stark, would you yield for one question?

The Chairman. Mr. Stark is recognized.

Mr. Stark. I would be glad to yield.

Mr. Corman. You had listed priorities.

Mr. Stark. These are ones that I think might be a series of priorities.

Mr. Corman. I would ask you, as the father of a spinster, would you be willing to support an increasing penalty for unmarried males, increasing each year until they straightened out their status?

Mr. Stark. As I said, these may not be my personal choices in order of how they ought to rank, but I would come back to Mr. Sunley. If we could agree in this order or some other order, wouldn't our combined jobs be easier? And then it is a question of how much of a rate.

Mr. Sunley. Mr. Stark, I think you really are pointing to some of the fundamental problems. You have got to decide on what your goals are. Many would argue and agree with you that one-earner couples with children ought to have the lowest tax rate. Encourage one parent to be in the home. A two-earner couple with the same income maybe ought to pay higher taxes than the one-earner couple with children. On the other hand——

Mr. Stark. Or the one-earner couple with no children.

Mr. Sunley. On the other hand, there are many who point out that, when two single individuals get married and they are both working and if their incomes are not too disparate, their total taxes often go up. This is viewed as an inequity. Equally important, it leads to a work disincentive which may discourage the secondary earner from participating in the labor force. And there are some economic costs to that.

Mr. Stark. That may also be a socially desirable thing with high unemployment.

Mr. Sunley. I have always thought, Mr. Stark, that under the Fisher or Conable approach to provide a tax deduction or a credit for the lesser-earning spouse, it is not difficult to justify the approach to the couple living next door with only one earner, who says "My goodness, our neighbors have the benefit of two incomes and we have the benefit of only one income, but they get a fancy tax deduction."

Mr. **Stark.** Here you have the attribution of the services of the spouse who maintains the household. I mean there is an attribution of income to the partnership. But my own feeling—and this, I guess, is my question—is: Don't we have to set the priorities? I mean, I would suspect that the national referendum would opt on the side of marriage—in other words, the two-earner couple as opposed to the two single couple—because of the traditions of our society, which, I suspect, are strong.

I just don't know how we are going to resolve the problem unless we can, as a group, say this is the order in which these people ought to receive preference. And, once we get there, I see that the problem is pretty much mathematical in terms of costs of lost revenue or gained revenue.

But I don't see how we will ever get—maybe the Treasury or the members of the committee can—but I think that until we are ready to say that there are some national priorities or tests and there are some social benefits or there are some national defense benefits or there are some economic benefits to the economy one way or another, I don't know how we are going to resolve the problem. I think that until that time, we have just got the cart ahead of the horse here.

Does the administration have a set of priorities that guide you in your tax policy planning relative to one-earner and two-earner couples with children?

Mr. **Sunley.** Mr. Stark, in assembling alternatives for individual income tax reductions, we have at the staff level included on occasion some reduction in the marriage penalty. I must say that it was very close to being in the President's 1978 proposals. I think we met with a number of members of this committee.

When the decision was made to scale back the overall revenue cost of the President's 1978 proposals, it ended on the cutting room floor.

Mr. **Stark.** Would you agree with me, though, that if we could establish the order of priorities, your job and our job would be much simpler?

Mr. **Sunley.** That is true. We have several principles, all of which by themselves are meritorious and we agree on them. But maybe we end up having to sort of shave a little off each principle and get a kind of compromise that reduces some penalties and bonuses. Otherwise you may not be able to achieve any of the goals perfectly.

Mr. **Stark.** Yes; but unless we know what the preferences are——

Mr. **Sunley.** Yes; unless the preferences are very clear.

Mr. **Stark.** Thank you.

The **Chairman.** Mr. Gradison

Mr. **Gradison.** Mr. Chairman, first I would like to thank Mr. Sunley for his testimony, which, I think, has put this issue in perspective. The number of dollars involved suggests that, while there is indeed a major penalty, there is also a major bonus and the bonus seems to be larger in aggregate than the penalty, which, I guess, has something to do with the complicated problem we face.

Mr. Sunley, as a long-term solution, allowing people who are married to treat their income and be taxed as if they were separate indi-

viduals rather than married has a lot of appeal. I recognize its re
enue cost, and I will come back to that in a minute.

But you have stressed in your statement the problems, the decisio
that would have to be made if this were done. Didn't we have an i
come tax system which dealt with individuals, at least who werer
from community property States, in just that way up until 1948?

Mr. **Sunley.** Yes; we did. Of course, in community property State
income was generally split 50–50. In other States, we did have to fa
some of these assignment-of-income problems.

Mr. **Gradison.** And we dealt with higher marginal rates than w
have today?

Mr. **Sunley.** That is true, and there were a lot fewer two-earn
families at that time than we have today.

As I say, I have no doubt that we can solve the kinds of comple
problems that are involved in separate returns. Let me take just or
if I may, Mr Gradison: the earned income credit which was provide
as a percent of earnings. It is phased out in the case of married couple
based on their combined income. In other words, we decided that th
earned income credit shouldn't go to the spouse who earns $3,000 c
$4,000 if the other spouse has $20,000 or $25,000 of income.

Now, if we believe that the separate return is the appropriate wa
to go and that we want to provide an earned income credit to encour
age everybody to earn $4,000 or $5,000 and to phase it out above tha
point, then we can go that way, recognizing, of course, that for man
couples who operate as economic units, we are providing a tremendou
incentive for part-time work. This would be in contrast to low com
pensation and social security tax relief now in effect under the earne
income credit.

So we have to decide how we want to deal with the earned incom
credit because of the way it phases out on combined income. Simila
problems exist with the combined income phaseout rules for the dis
ability income exclusion and for the elderly credit in the case of mar
ried couples over the age of 65.

Mr. **Gradison.** Mr. Sunley, the revenue cost of treating people to
tally as individuals here is staggering in its size, and I recognize that
Is there any way we can phase that in, if we wanted to do it, in order
to avoid that tremendous impact at one time but still be able to give
taxpayers and the general public assurance that we were moving in
that direction?

Mr. **Sunley.** Obviously one way you cut back the revenue cost is to
agree that what you are concerned about is the marriage penalty anc
that you are not concerned about the single penalty. Then look at the
class of approaches which provide optional separate returns.

The approach estimated in my testimony is optional separate returns, and the use of the single rate schedule with the single zero bracket amount.

Obviously the approach could use transitionally a rate schedule and a zero bracket amount somewhere between that provided under current law for married filing separately and that provided for single individuals. So the revenue costs could be cut down going that way.

One disadvantage of that approach, Mr. Gradison, is that that would complicate the situation because a couple would not know whether it is advantageous to elect optional separate filing or not. Moreover, it would not fully eliminate the marriage penalty; it would only partially eliminate it during transitional years.

But that would be a way, it seems to me, of providing the rate schedule for optional separate filing to move closer and closer to the single rate schedule but not start out at that point.

Mr. GRADISON. One final point: It does seem to me, in terms of the simplicity of dealing with the issue, that if we are serious about doing something about this, requiring everybody on a mandatory basis to file an individual return would be the way to deal with that.

But, if I understand this correctly—and I am just asking to see if I understand it correctly—if I understand it correctly, that would provide the irony that treating each married person as an individual with the goal of ending the marriage penalty would be considered by an awful lot of our constituents as being antimarriage since we would take away the marriage bonus for many people today.

I wonder if I understand this. I am here at the hearing because it is complicated and I want to make sure I get the picture.

Mr. SUNLEY. That is true. I mean, the advantage of the marriage bonus situation where only one spouse has earnings or the earnings are split something like 80–20 would be eliminated and, in effect, we would be back to the pre-1948 system, where we had only one rate schedule for the individual income tax.

The CHAIRMAN. Mr. Downey.

Mr. DOWNEY. Thank you, Mr. Chairman. Mr. Sunley, Mr. Stark was pursuing a line of questions that I wanted to talk to you about, and that is the priorities the administration has. Of the four that you listed, I assume the one stating that the income tax should be progressively based is your highest. Is that correct?

Mr. SUNLEY. We would not want to reduce the current level of progressivity in the income tax base as a way of solving this problem.

Mr. DOWNEY. All right, so when we are choosing between the second, third and fourth I assume the administration is prepared to allow the committee to work its will. Is that basically what you are saying?

Mr. SUNLEY. At the time the administration would propose a major income tax reduction we would identify which of the various approaches that we prefer. Once you have accepted the first principle, it is going to be very difficult to meet the third and fourth principles without violating the second principle.

So, what you really end up doing is shaving a little bit on the last three principles. I mean you have to decide that two two-earner couples living next door to each other should not pay the same tax even though they have the same combined incomes, if in fact the income is earned in different proportions by the two spouses of each couple.

Mr. DOWNEY. Can I ask you to what extent are your priorities going to be generated by revenue loss? Do you have an acceptable revenue loss range that you are looking at?

Mr. SUNLEY. The revenue loss is always an important consideration. You have to realize that if the administration should propose, say, $5 billion of tax reduction for two-earner couples, that it would have to be embedded into a pretty big tax cut package because presumably you have to have something for everybody. You have to have something for single individuals, something for one-earner couples. You are probably into a $20 billion tax cut package before you can fit in $5 billion of major relief for two-earner couples.

That is, there has to be a tax reduction for everybody when providing an additional $5 billion for the two-earner family couples. So, yes, we have to be concerned about revenue loss. I can see circumstances that would drive us toward the Conable or Fisher approaches of a deduction or credit because they can be more easily scaled to reduce the revenue cost.

I did suggest to Mr. Gradison a way that you might hold down the revenue cost and phase in the revenue cost of the optional separate return approach. The problem of going that route is one that it makes it very difficult for a couple to know until they have done their tax returns two different ways as to which way they are really better off.

And that kind of chaos and confusion we may want to do without.

Mr. DOWNEY. Thank you, Mr. Sunley. I want to associate myself with what Mr. Gradison said before. I think it is clear that we all want to do away with the penalty, but when we begin to understand that there are also bonuses involved, that causes some tempering of opinion.

Mr. Chairman, I also want to recognize the work that our colleague, Mrs. Fenwick of New Jersey, has done with respect to this issue. Every year that she has been a member in this body she has introduced a major change in the tax structure. Today she is sick, and I know she is very disappointed that she cannot be here.

She has been one of the prime movers of this effort, and I want to make sure we recognize that fact.

The CHAIRMAN. Mr. Guarini.

Mr. GUARINI. I want to thank you very much for the testimony you have given. It is a very difficult and complicated subject matter. You articulated the problems quite well. And of course we cannot find the solutions until we understand fully what our problems are.

It probably is particularly complicated because we do not as a nation know where we are going philosophically. And I think this is the guidance we have to get from you and from the sense of Congress and the administration. I am disappointed though that no position has been taken by the IRS because they can be helpful in our coming to some fundamental conclusions.

Basically we want an equitable tax and we want fair treatment of our married couples. We want to encourage marriage. And I think there will be a great deal of interest that will be focused on these earnings because it gives us some perspective as to where we are going as a nation taxwise. And we must, on a voluntary system, rebuild the confidence of the people as to the fairness in our tax system.

One thing that strikes me is that we seem to always be striving for a progressive tax. And although that has been a way of the past, I wonder whether or not you have any opinion as to whether a progressive tax sustains itself if we are as a nation going to be dealing with double-digit inflation?

Because as we have a progressive philosophy to our tax, the higher the wage earner goes up in its amount of tax correspondingly you have built into the system an unfairness as to the CPI index because I do not think that our progressive tax today can carry an 18- to 20-percent inflationary factor.

Europe has succeeded in getting through difficult times because they had a VAT. And I am not saying that this is the time that I am going to propose a VAT, which of course has been very strongly pressed by our good chairman, but I think that we have got to start thinking in terms of a different philosophical theory about a progressive tax when we must realize that we are in an era of inflation that will probably stay with us many decades to come.

I am wondering whether or not you have any comment on this. In other words, does our tax system as it is structured today cope with the economic problems of our day or are we really in a prolonged period of double-digit inflation and going into an era where we have to start thinking in terms of more radical changes such as VAT?

Mr. Sunley. Mr. Guarini, my view, after reflecting on it the last 3 years at the Treasury Department, is that hyperinflation will destroy the income tax. I think there is no doubt about it. It will destroy both the corporate income tax and the individual income tax.

There are varying ways to deal with that. With respect to the individual income tax, where the impact of inflation is to increase average effective tax rates by shoving taxpayers up into higher and higher marginal tax brackets, you can provide periodic tax cuts. We have done that in the past, or we can index the tax system for inflation.

Mr. Guarini. But that only creates more inflation.

Mr. Sunley. There are many who feel that is an important watershed issue if we go down the road of indexing everything in the economy. The administration agrees with that view and would prefer a periodic adjustment as has been done in the past.

For example, this committee in the Revenue Act of 1978 adjusted the marginal tax rates and the zero bracket amounts to offset about 1 year's worth of inflation. So that periodic adjustments can stop the bracket creep and increasing average tax rates.

But inflation does require us to rethink the whole tax system; it does require us to pay, I must say in my own personal view, close attention to proposals to shift the burden of the tax system from income onto consumption whether that be done by a value-added tax or a retail sales tax. The issues that have been raised by your chairman by greater emphasis on consumption tax are crucially important in terms of how to get control of inflation.

Mr. Guarini. I think, as an administrative body, there should be some planning and direction by the taxing department of our Nation and our Treasury in taking a leadership role so that we are not going to hit this crisis when it is too late and so that we can plan adequately for the future.

This is why I would like to see some strong positions taken by the Treasury Department. My time has run out.

The Chairman. Let me say to my friend that I want to commend him for a very perceptive line of questioning.

Mr. Schulze?

Mr. Schulze. I think, quite frankly, Mr. Guarini is on the right track. The reason we are here today is that the Federal Government is taking so much tax and the burden is so great that individual taxpayers are now looking and are more concerned about equity. And they see this dramatic inequity in our Tax Code.

Also on the line of progressivity, the figures I have are about 1 year old and I think maybe you can bring me up to date, but I understand that the top 10 percent of taxpayers, that is $24,000 and over, now pay 50 percent of the tax bill and the top 5 percent of our taxpayers at $30,000 and over pay one-third of the tax bill, and the bottom 50 percent of the taxpayers pay only 7 percent of the tax bill.

Now, I would presume over the last year with the dramatic inflation we have had that those figures are even a little bit worse than they were before. Is that true? Do you have any current figures on the percentages?

Mr. SUNLEY. I do not have current figures on that.

[The Treasury Department provided the following information:]

Estimates for 1979 indicate that taxpayers with expanded income of $30,000 or more, 11.2 percent of all taxpayers, paid 52.5 percent of all income taxes. Taxpayers with expanded income of less than $10,000, 43.4 percent of all taxpayers, pay 17.4 percent of all income taxes. See table below.

DISTRIBUTION OF NUMBER OF INDIVIDUAL INCOME TAX RETURNS AND TAX LIABILITY AND CUMULATIVE PERCENTAGE DISTRIBUTION

[1979 law, 1979 income levels]

Expanded income	Returns: Number (millions)	Returns: Cumulative percent from lowest to highest income	Tax liability: Amount (billions)	Tax liability: Cumulative percent from lowest to highest income
Under $5,000	21.7	23.3	[1] −$0.3	[1] −0.1
$5,000 to $10,000	18.7	43.4	6.8	3.1
$10,000 to $15,000	14.5	59.0	17.4	11.3
$15,000 to $20,000	11.9	71.8	24.2	22.7
$20,000 to $30,000	15.8	88.8	52.6	47.5
$30,000 to $50,000	8.0	97.4	50.9	71.5
$50,000 to $100,000	2.0	99.6	31.0	86.1
$100,000 and over	.4	100.0	29.9	100.0
Total	93.0	100.0	212.5	100.0

[1] Includes refundable earned income credit.

Mr. SUNLEY. Inflation has its impact on increasing tax burdens in the middle income ranges. At the very top ranges you are not being shoved up into higher tax brackets. You are getting more income tax at the 70-percent rate.

But at the very highest levels the elasticity of the income tax with respect to inflation is not as great as at the very bottom end of the rate schedule where people who are nontaxable jump from the zero percent tax bracket to the 14-percent bracket.

But 1 year's inflation is not going to shift that distribution very much. I recall seeing figures similar to this. And I am sure that is right. Obviously the bottom 50 percent includes a large number of taxpayers who are required to file returns and owe no tax liability.

Distribution is altered if you take into account the tax which has been our most rapidly growing tax, namely the social security tax. And that tax is, as you know, a proportional tax up to a ceiling amount and it is regressive for income levels above that amount. So that many of the bottom 50 percent may not be paying income tax but they may in fact be paying social security tax.

And I think one of statistics I always find interesting is that the median family in this country now is paying more in social security tax than in income tax.

Mr. SCHULZE. I have long been an advocate of a flat tax. And I wonder if the time has not come or will not come within the next couple of years where we can seriously think about a flat tax. In my opinion that is the most equitable tax of all. Do you think the time has come?

Mr. SUNLEY. Well, there are various types of proposals for a flat tax. At the extreme, people have suggested doing away with all deductions and just imposing a flat tax. I think that is not viable. I think we do want to make a distinction between a family with high medical expenses and another family with equal income but with no extraordinary expenses.

Moving to a flat tax would radically shift the burden of taxes in this country and greatly increase the taxes at the lower end and reduce them at the upper end.

Mr. SCHULZE. Percentagewise?

Mr. SUNLEY. Yes.

Mr. SCHULZE. Not dollarwise?

Mr. SUNLEY. Yes, dollarwise too, I mean both. If you look at the overall Federal tax system, taking account of all Federal, State, and local taxes, work that Brookings did a number of years ago shows that through a broad middle income range the overall tax system is about proportional.

In other words, we have some progressive Federal taxes, namely the income tax, some regressive taxes like social security, and quite a number of regressive States taxes such as the sales taxes where because higher income people save a greater share of their income, the sales tax is regressive with respect to income.

Mr. SCHULZE. It just often seems funny to me when it helps the Treasury's case their main cry is for equity. When we are talking about reducing revenues to the Treasury, equity suddenly sort of goes out the window. But you think what we are talking about here is a matter of equity.

When I look at the overall picture and when I see that from 1978 to 1981 the revenue to the Federal Government will have doubled from $300 to $600 billion, I do not see why we cannot find a few dollars to create a matter of equity such as we are talking about here today. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Corman.

Mr. CORMAN. Thank you, Mr. Chairman. How many total joint returns are there? The question I want to get at is how many joint returns are there, and of those, how many are single earners and how many are two earners?

Mr. SUNLEY. We estimate, Mr. Corman, in 1979 there will be 45.7 million joint returns filed.

Mr. CORMAN. And of those, how many are two earner and how many are single earner?

Mr. SUNLEY. About over half are two earner.

Mr. CORMAN. About half are two earners now?

Mr. SUNLEY. About half of married couples are two-earner couples now.

Mr. CORMAN. Now, of the two earners, how many are more than two people, in other words, how many have children or some other dependent? Do you have a breakdown of that?

Mr. SUNLEY. No. I do not have that but let me find for you some census data on the number of married couples with children where there are two earners. There is data available.

Mr. CORMAN. All right.

[The Treasury Department provided the following information:]

ESTIMATED NUMBER OF JOINT RETURNS BY EARNING STATUS OF SPOUSES AND BY PRESENCE OF CHILDREN

Item	Estimated number of returns (millions)
Joint returns of married persons	$45.7
With 2 earners	22.5
With children	13.5
With other dependents or no dependents	9.0
With 1 earner	23.2
With children	13.7
With other dependents or no dependents	9.5

Mr. CORMAN. I must say this is an impossible thicket. Every time we look at it we decide there is nothing to do about it and we back off because no matter who you give relief to, on a comparative basis you have hurt somebody else. I am not sure where we ought to be and I am not sure that the social premises we all start with are accurate, nor do I have the faintest idea of how to get out of it, which seems to be the position you are in, too.

I know we have talked for some time about child care expenses for that two-earner family. As I recollect we now have a potential $400 tax credit?

Mr. SUNLEY. For one child. And $800 if there are two or more.

Mr. CORMAN. Did we remove the earnings limit on that?

Mr. SUNLEY. Yes. There is no earnings limit.

Mr. CORMAN. It is available across the board?

The problem from a working woman's point of view is if she has to hire a secretary to facilitate her capacity to earn money, that salary is fully deductible but if she has to hire a nurse to care for her child to facilitate her earning money, it is a different kind of employment.

And I have never been quite sure I can follow the logic of that. I wonder if you could help me out with it.

Mr. SUNLEY. Well, it is a key area, Mr. Corman. On the one hand you want to provide a deduction for the cost of earning income. So if I am self-employed and have a secretary and pay a secretary a salary, that is a cost of earning that income.

When you turn to costs such as child care and commuting expenses you find that, yes, some these costs may be incurred in order to earn income but they may be incurred also for nonincome earning reasons. And it is difficult to agree just what special tax treatment should be given for it.

Many would argue that we ought to permit a deduction for commuting expenses because you got to fill the gas tank in order to get to work. On the other hand, how much one incurs in commuting expenses may reflect whether one wants to live 30 miles from downtown or 10 miles from downtown or live right within several blocks from where one works.

So, we have concluded we should not have a tax——

Mr. Corman. I think the distinction there is——

Mr. Sunley. Child care is somewhere between your commuting expenses and your secretary. It clearly involves to some extent cost of earning income. But these housekeepers, the expenses for which a credit is provided, also clean the house and do the laundry. That represents costs a one-earner couple may choose to hire somebody to do and yet gets no tax benefit for it.

Mr. Corman. I think the difference in the commuting is that everybody has it and not everybody has responsibilities that require them to hire somebody else to facilitate earnings. I am not sure it is worth worrying all that much about and it is a credit that probably helps some.

But I, in looking at the whole area of labor, this is the only kind of labor you cannot offset against income. This is one of the reasons the market for nurses and domestic help has been so very low and probably escapes the tax system altogether; because we have singled that out as a form of labor which you cannot deduct from your income.

Mr. Sunley. They may be escaping the tax less as the result of the child care credit. When you complete the form for the child care credit, you are required to indicate whether social security taxes were paid with respect to the employed person. If you indicate no, the IRS may start asking questions. If you do in fact pay social security taxes, you leave a record in the tax system.

Mr. Corman. I thought that was one of the good things about all of this.

The Chairman. Mr. Pickle?

Mr. Pickle. Mr. Chairman, I notice that we have our friend, Senator Mathias, or did have him and he is waiting to testify and we have several other witnesses. So I am not going to ask but one question.

As I understand, Mr. Sunley, there is no way for this to come out even. I guess the nearest way would be to take the optional approach. Would the optional approach come as near to satisfying all groups except the Treasury?

Mr. Sunley. Well, let's leave the Treasury out. It is not going to satisfy the single individuals who claim that they pay higher taxes because they remain single. If they would marry, their taxes would go down. You know implicitly when they say that, they are saying if they would marry somebody with no income.

We get many letters from single individuals complaining about not being able to use the joint rate schedule or not being able to use the head of household rate schedule since they do not maintain a household for a dependent. We get as many letters from them as from married two-earner couples. So, we got everybody unhappy at this point, I am afraid, except maybe one-earner couples who have the best of all possible worlds.

Mr. Pickle. Well, I felt perhaps the optional approach might come nearer to satisfying the various groups.

Mr. Sunley. It goes a long way to satisfying the two-earner complaints.

Mr. Pickle. I would hope that though you make no recommendation, that in the event the committee proceeds with a markup and tries to make some changes that at some point the Treasury would give us their specific recommendations. I think we need to have your own feelings about how we should proceed if we do. And I hope that at some point you will give us your recommendations.

Thank you, Mr. Chairman.

The Chairman. Mr. Rousselot?

Mr. Rousselot. Thank you, Mr. Chairman.

Mr. Sunley, I wish to warn you in advance I am one of the 220 Congressmen who have cosponsored the Fenwick-Mathias bill so I may be one of your enemies maybe. As a negative incentive to marriage, which is more important: the total dollar amount of the marriage penalty incurred or the marginal tax rates imposed on the second income of the people of the couple?

Mr. Sunley. The two are very closely related, Mr. Rousselot.

Mr. Rousselot. If you had to make a choice, what would it be?

Mr. Sunley. I think it is essentially the marginal tax rate. That is what is giving the signals in terms of labor supply: How much of the additional income I earn will I get to keep after taxes, in other words.

Mr. Rousselot. So then a credit would not be a very good approach?

Mr. Sunley. Well, a credit of some percent of the first $20,000 of income does reduce the effective marginal tax rate up to $20,000. Now, obviously if the second earner is earning more than $20,000, and there are many who do but in total aggregate numbers they are relatively small in relation to the total population, the credit would provide no further benefit in reducing the marginal tax rate.

Mr. Rousselot. Well, as I read the charts that have been given to us, "Taxable returns under present law," the bulk of the first category of two-earner couples runs $10,000 to $15,000, the next category $15,000 to $20,000, $20,000 to $30,000, $30,000 to $50,000.That is one, two, three, and four.

These categories are the overwhelming bulk of the people in the two-earner category.

Mr. Sunley. That is true. But that is the total family income. In the overwhelming bulk of the two-earner families the lesser earning spouse earns less than $20,000. The combined family income may be substantially above $20,000.

Mr. Rousselot. Right. And so that is where the bulk of the people are that are affected by what we do.

Mr. Sunley. Yes.

Mr. Rousselot. Well, thank you, Mr. Chairman. I am anxious to follow up some more but in the interest of getting to our distinguished colleague from Maryland who is here and this is his second trip this week, I hate to slow down progress.

The Chairman. Thank you very much, Mr. Rousselot. Thank you, Mr. Secretary. We appreciate your testimony.

It is our privilege to welcome back to the witness table the distinguished Senator from Maryland, our former colleague, Charles Mathias. Mr. Conable.

Mr. CONABLE. Mr. Chairman, may I inquire of the Senator if he is here representing also our distinguished colleague, Millicent Fenwick of New Jersey, who has a statement and who has been taking a good deal of initiative on this matter, and who I hope because of her illness will not be unrepresented here.

STATEMENT OF HON. CHARLES McC. MATHIAS, A U.S. SENATOR FROM THE STATE OF MARYLAND, AND ON BEHALF OF HON. MILLICENT FENWICK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Senator MATHIAS. Mr. Chairman, I have a very brief statement from Representative Fenwick that I would like to record first.

The CHAIRMAN. Without objection, you may proceed.

Senator MATHIAS. While Mr. Sunley is still in the room, let me say to my good friend from California, Mr. Rousselot, that I do view Mr. Sunley as an enemy of any one of the 24 Members of the Senate or the 222 Members of the House.

In fact, Mr. Sunley took care to treat these proposals with a high degree of impartiality. He did not oppose any one of them. We hope he is not going to.

Mr. ROUSSELOT. Would the gentleman yield?

Senator MATHIAS. Certainly.

Mr. ROUSSELOT. Maybe I hit it a little too hard here but if you are not for something you are just neutral.

Senator MATHIAS. Well, let's not push him over the edge.

Mr. ROUSSELOT. Well, all right, I withdraw my attack.

Senator MATHIAS. Mr. Chairman, this is Mrs. Fenwick's statement and I read it with great regret she is not here.

She says:

> Mr. Chairman and members of the committee, I deeply regret that I am unable to appear before you today to discuss a topic that has concerned me for some time: the "tax on marriage." I have become ill with a case of food poisoning and am recovering at my home in New Jersey.
>
> As you know, I have sought to eliminate the "marriage tax" since I was first elected to Congress in the fall of 1974. During that first campaign, a young couple approached me to tell me that, although they wanted to get married, they could not afford the extra $700 in Federal income tax that it would cost them.
>
> Since that time I have received countless letters from young people in similar situations, from married couples contemplating divorce in order to save money and from many others who are simply quite unhappy with the penalty they are paying.
>
> Mr. Chairman, we should not be forcing people to resort to cohabitation or divorce to get a fair shake from our tax system. The "marriage tax" affects millions of Americans, perhaps as many as 20 million couples, half of all the married couples in the country. It creates a disincentive for married women to want to go to work. In the years to come it will affect many more Americans as married women enter the work force in increasing numbers.
>
> The time has come to end this unfair tax. Senator Mathias and I have proposed to do so by allowing two-earner married couples the option of being taxed as if they were single. Two columns could appear on the federal tax form, as they do now on several state income tax forms, to allow each spouse to be taxed

individually on his or her own income, while avoiding the added administrative cost of processing millions of additional forms and having to check for double-claiming of deductions and exemptions. Couples who choose to be taxed separately would pay the rates currently applicable to single individuals.

The chief objection to our proposal seems to be the amount of revenue that its enactment would cost the Federal Treasury. As you know, Mr. Chairman, Congress recently voted to set aside 60 percent of the revenues from the "windfall profits tax," which was signed into law by the President just this morning, to finance a cut in income taxes. The monies from this tax would be well spent if they were devoted to the elimination of one of the most serious and unpopular inequities in our tax system.

If the revenue cost of eliminating the marriage tax is still felt to be too great, this elimination could be accomplished gradually. I have proposed in my written testimony to phase out the "marriage tax" by incrementally reducing the difference between the tax rates for married couples who file separately and those for single individuals over a number of years. This approach would at least allow the current budget crisis to pass before federal revenues were substantially reduced.

My bill to eliminate the "marriage tax," H.R. 3609, has 222 cosponsors in the House of Representatives—over half of the members. Senator Mathias' bill, S. 336, has 24 cosponsors in the other chamber. When added to the millions of Americans who resent this extra tax, this represents a broad consensus which favors an end to the "marriage tax."

Mr. Chairman, I would like to thank you and the members of the committee very much for considering this terribly important issue. Again, I apologize for my inability to appear before you today. And I hold out my most sincere hope that you will act to end this unfair tax inequity.

The CHAIRMAN. Senator, we appreciate your bringing us this statement from Millicent Fenwick. She has been very active on this side in promoting this cause. We would be happy now to hear your statement.

Senator MATHIAS. Mr. Chairman, to conserve the time of the committee, I would ask that my prepared statement be accepted as read.

The CHAIRMAN. Without objection, the full statement and supplemental materials will be included in the record.

Senator MATHIAS. I was encouraged by one aspect of Mr. Sunley's testimony. He referred repeatedly to a marriage penalty. This is one of the first times I have heard the Treasury really admit there is a marriage penalty. It is, I think, an important admission on the part of the Treasury and it does reflect the fact that in the last 20 years the country has undergone tremendous changes.

We have put men on the Moon; we have learned to wait in gaslines; we have watched miniskirts and wide ties come and go. But along with these noteworthy events we have had an important evolution in American family life. This year, for the first time, more than 50 percent of all American women are working and they are working at jobs that have never before been held by women and at salaries that are more and more in line with the work that they do.

It is estimated that in the next 20 years the number of working women will continue to increase and may be as much as 70 percent by the year 1990. That is only 10 years off.

So, Mr. Chairman, what I am really saying is that we are in an evolutionary phase. This problem is not going to go away. It is going to get more serious. It is going to get bigger. The demands for equities are going to become more shrill and more loud, but, in the face of all of this change, our tax system has stood still.

This is not an evil. This is no crime that anybody has committed. This is a situation which has happened because 25 years ago we devised a system to allow married people to combine family income and file returns jointly. For the traditional one-earner family this was good. This was a reform. This was something that was desirable, that recognized the expense of raising a family; and it taxes married people at an appropriate lower rate.

As long as the majority of couples were traditional couples, the system fell within the guidelines of being fair and equitable. But life styles have changed, as I have said, and the typical American family is no longer the traditional one.

Over half of all couples have two wage earners. As a result, our tax system is making what the poets have called "the tender trap" into a booby trap. This quirk in our tax code actually encourages people to save money by divorcing or by simply living together or never to marry at all.

Just very briefly, Mr. Chairman, I had a letter from a minister in Maryland who says that tax advisers are now advising people to live together rather than to marry. I will quote very briefly from his letter. He said:

> It is interesting that the very things you said in our address to Congress especially concerning the advice of tax advisers to older couples contemplating marriage is the same advice I had to give most reluctantly and certainly with moral twinges of conscience. Yet I know my parishioners could make ends meet easier as single persons than as married couples. There was no way that I, as a pastor, could advise them to become man and wife under the present tax structure.

A sociologist from the University of California at San Francisco writes:

> As a sociologist I am acutely concerned over disincentives to women working and to laws and regulations which undermine the family. Bills, such as S. 336, are sorely needed to bring about the structural changes in our society which will allow women to realize their potential and have equal access to opportunity.

And this from a distraught father. He writes:

> A few weeks ago my daughter, a working girl in her 20's, told me she hoped to have children in the future but would not necessarily get married. I tried without sounding too preachy to explain that a child deserving to grow up in a stable environment with both a father and a mother. "But what chance have I got against a government that actually charges you money for getting married?"

Then you will hear later today from Mr. and Mrs. Boyter, who are my constituents, who will testify that for 3 years they got a divorce at the end of each year and remarried a few days later in order to save taxes.

I think that puts in perspective Mr. Downey's question to Mr. Sunley: "What is an acceptable revenue loss?" Well, we are finding for many individuals, for many private American citizens, it is not an acceptable revenue loss to pay the marriage tax, to pay the penalty, what Mr. Sunley has called the marriage penalty.

I do not think that we ought to drive people into court battles over their taxes. I think it is our job as legislators to resolve the problem.

Representative Fenwick and I have bills that would allow all married couples the option of filing their taxes as single individuals, using the rate schedules for single people, which would simply allow married couples to choose between two systems of filing and prevent them from paying the higher taxes simply because they are married.

Mr. Chairman, I want to salute you on choosing this season of the year for this matter, not because we are just short of the 15th of April, but because the flowers the June brides may want to carry down the aisle are just peeking their first buds up out of the ground. But we have to wonder how many young couples will make it to the altar this year or how many will not make it down the aisle because of the marriage penalty.

It is a time to get rid of this particular obstacle and to let the wedding bells ring out in America once again.

Thank you, Mr. Chairman.

[The prepared statements of Senator Mathias and Congresswoman Fenwick follow:]

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

Mr. Chairman, I want to thank you for this opportunity to testify at these hearings on the marriage tax penalty. This is an important issue, and your timing couldn't be better.

In the last 20 years, our country has undergone great changes. We have put men on the moon, learned to wait in gas lines, and watched mini-skirts and wide ties come and go. Along with these noteworthy events, American society has seen an important evolution in family lifestyle. This year, for the first time, more than fifty percent of all American women are working—at jobs never before held by women, and at salaries more and more in line with the work they do. It is estimated that in the next 20 years, the number of working women will continue to increase, reaching 70 percent by 1990. Clearly, working women are now an integral part of American society.

Yet, in the face of this change, our tax system has stood still. 25 years ago, we devised a system to allow married people to combine all family income and file their returns jointly. For a traditional family, with one wage earner, this is a good system. It recognizes the expenses of raising a family, and taxes married people at an appropriately lower rate. As long as the majority of married couples were "traditional" couples, this system fell within our guidelines of being "fair and equitable to the majority of American citizens." However, lifestyles have now changed. The typical American family is no longer the "traditional" one. Over half of all married couples—38 million taxpayers—have two wage earners. Yet, our tax system refuses to recognize this. As a result, the majority of American couples are forced to pay extra taxes based upon an antiquated system that is now "fair and equitable" only to a minority of people.

This inequity is called the "marriage tax penalty." It taxes wage earners more if they are married than if they are not, because when two incomes are combined and filed jointly, the second income is thrown into a higher tax bracket. This penalty affects all income levels, but hurts the middle income couple the most, increasing that couple's tax bill by as much as 63 percent. In short, our tax system is making the so-called "tender trap" into a booby trap.

Clearly, this quirk in our tax code encourages people to save money by divorcing and simply living together, or to never marry at all.

Just listen to some excerpts from letters I have received:

A Maryland minister writes that tax advisors are now advising people to live together rather than marry:

> It is interesting that the very things you said in your address to Congress, especially concerning the advice of tax advisors to older couples, contemplating marriage, is the same advice I had to give most reluctantly, and certainly with moral twinges of conscience. Yet, I know (my parishioners) could make ends meet easier as single persons than as married couples. There was no way I, as a pastor, could advise them to become man and wife under the present tax structure.

A sociologist from the University of California at San Francisco writes:

> As a sociologist I am acutely concerned over disincentives to women working and to laws and regulations which undermine the family . . . Bills such as (S. 336) are sorely needed to bring about the structural changes in our society which will allow women to realize their potential and have equal access to opportunities.

And listen to this cry from the heart from a distraught father:

> A few weeks ago . . . (my) daughter, a working girl in her early twenties, told me that she hoped to have children in the future, but would not necessarily get married . . . I tried, without sounding too preachy, to explain that a child deserved to grow up in a stable environment with both a father and a mother. But what chance have I got against a government that actually charges you money for getting married?

And, then there are examples like Mr. and Mrs. Boyter, who will be testifying later, who for three years got a divorce at the end of each year, remarrying a few days later, after taking a vacation on the money they saved by filing as single people. Today they are in court fighting for their right to divorce for tax purposes. I do not know how they will fare, but, it is clearly absurd that our tax system would force a couple to this extreme.

The answer does not lie in court battles. It is our job, as legislators, to resolve this problem. As you well know, Congresswoman Fenwick and I have introduced bills that would allow all married couples the option of filing their taxes as if they were single, using the rate schedules for single people. This proposal would simply allow all married couples to choose between two systems of filing, preventing them from paying higher taxes simply because they are married.

The Interdepartmental Task Force on Women concluded a major study on the marriage tax penalty that strongly supports our proposal as the "simplest way to permanently eliminate the 'marriage penalty.' " The American Bar Association, among other groups, has passed a resolution favoring this legislation. My bill in the Senate, S. 336, has 23 cosponsors, and Mrs. Fenwick's bill has close to 200 in this Chamber. Clearly, the support for this proposal is widespread and continuing to grow.

This penalty is not a problem that is going to disappear if we ignore it. Everytime a women enters the work force, the marriage penalty grows, as do the Treasury's ill-gotten revenues. An obstacle to our proposal is the revenue loss. But this figure itself—estimated from $8 billion to $12 billion—makes the case for our bills compelling. It is a clear indicator of the scale of the inequity, and the amount of tax money involved will only become larger and more difficult to do without in the years ahead. The longer we wait to act, the harder it will be to wean the Treasury from this extra tax bite.

Mr. Chairman, spring is quickly approaching and with it come the flowers that our June brides will carry down the aisle. I wonder how many young couples will not make it to the altar this year because of our tax on marriage. I think it is time we got rid of this hurdle and let the wedding bells ring loud and clear across America.

TESTIMONY OF THE HONORABLE MILLICENT H. FENWICK
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY
BEFORE THE COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
ON THE TAX TREATMENT OF MARRIED COUPLES, SINGLE PERSONS, AND HEADS OF HOUSEHOLDS

APRIL 2, 1980

Mr. Chairman, Members of the Committee, good morning. I very much appreciate the opportunity to testify before you today. I have introduced legislation to eliminate the "marriage penalty" in each session of Congress since I was elected in November 1974, and I am grateful for my first opportunity to appear before you to discuss this important issue.

I believe that the Members of the Committee are all familiar with the background and history of the "marriage tax," so I will not dwell on this. I would like to note, however, a comment made by the distinguished Ranking Minority Member of the Committee on the floor of the House the other day when he introduced his own legislation on this topic. "Congress did not set out to enact a marriage penalty," he said. "It was inadvertently created..." As you know, I feel that it is about time we correced this mistake.

Mr. Chairman, it is unwise social policy to discourage people from getting married. Perhaps this was not the intent of the Congress, but there is no question that this is the effect of our current tax system. Times have changed, Mr. Chairman. In 1948, when Congress first established the family as the unit of taxation because of problems arising from the disparity in the tax treatment of individuals in community property and common law states, only about 17% of the married women in this country were employed. This number rose to 20% by the beginning of the 1950s, to about 40% by 1969 when Congress reduced the tax rates for single taxpayers, to well over half today. The figures released by the Bureau of the Census in February 1980 indicate that there are 22.8 million married women in this country who work. There are only 15.7 million working married men in the country whose wives do not work. This means that of the 38.5 million married couples in which at least one member participates in the labor force, 59% are two-earner couples. As I am sure experts will testify later today, the number of working married women is certain to rise even further in the 1980s, so that by the end of the decade, we may see two-thirds or even three-quarters of all the married women in the country working.

In 1972, the last time that hearings were held on the "marriage tax" issue, then-Assistant Secretary Cohen of the Department fo the Treasury testified before this Committee that "The wife is, I think, in our basic American tradition devoted to her husband's success and efforts." That may be true today, Mr. Chairman, but that does not mean that she doesn't have a job of her own. Many couples have told me that when they first got in touch with the Treasury Department about the "marriage tax" problem in the early 1970s, Treasury told them that not enough people were affected by it to warrant a change. Mr. Chairman, the "marriage tax" is getting worse. As this tax affects more and more working couples, the pressure for change will intensify, as will the pressure to avoid marriage for economic reasons.

This pressure is already formidable. Each day, my office receives letters from all over the country objecting to this unfair tax. Many of those who write claim that they cannot afford to gat married because of the added tax that they will have to pay, or that they are contemplating divorce after 10 or 20 years of marriage, or, worse yet, that they have gotten a "tax" divorce. With the permission of the Committee, I would like to enter a few of these letters into the record at the end of my testimony. They are a horror.

Mr. Chairman, we are sending out the wrong signal to the American people. We are confusing them. Just a few months ago, the newspapers reported that the Illinois Supreme Court had ruled that three children could not live with their mother because she lives with a man to whom she is not married. The woman, according to the Court, "offends prevailing public policy." Illinois and fourteen other states have laws against cohabitation outside of wedlock which are still on the books. Yet the Congress maintains a tax policy that provides a financial reward for cohabitation or divorce. We should not force people to go to these lengths in order to avoid an unjustified tax penalty. It seems to me that the current tax on marriage "offends prevailing public policy."

Apparently the majority of the Members of this House agree with my assessment. There are currently 222 cosponsors of the bill I have introduced to eliminate the "marriage tax," H.R. 3609. I have attached a list of cosponsors, which includes the names of 12 Members of this Committee: Mr. Gibbons, Mr. Ford, Mr. Downey, Mr. Guarini, Mr. Duncan, Mr. Vander Jagt, Mr. Crane, Mr. Frenzel, Mr. Martin, Mr. Schulze, Mr. Rousselot, and the departed Mr. Mikva. Three other Members of the Committee, Mr. Conable, Mr. Fisher, and Mr. Moore, have introduced bills of their own to address this inequity. In addition to the 222 cosponsors of H.R. 3609, there are eight Members of the House, and, of course, the distinguished Senator from Maryland, Mr. Mathias, who have introduced identical bills.

Mr. Chairman, I am offering a very simple solution to this problem. I propose; as you know, to allow two-earner married couples the option of being taxed as if they were single. This is a rather simple change to make. I am proposing that the tax rates for the "married filing separately" schedule, which, as you know, is now virtually obsolete, be reduced so that they equal those for the "singles" schedule. We would simply be reducing the number of schedules from four to three.

Despite the widespread misconception that married couples have the option of filing separately, they do not. That is precisely what I object to, because I believe that two-earner families have more expenses than families with a sole breadwinner. The married filing separately schedule, as you know, is essentially the same as the singles schedule was before Congress reduced the tax rates for singles in 1969. Its high tax rates render it useless to almost all married couples. The married filing jointly schedule, as you know, is derived from this married filing separately schedule. It taxes a couple's joint income, regardless of how it is actually earned, as if it were two equal incomes of one half the total, and applies the rates of the married filing separately schedule to each of these equal incomes. Because the married filing jointly schedule automatically incorporates the idea of income splitting relative to the married filing separately schedule, it is rarely to a married couple's advantage to use this latter schedule. In fact, more than 97% of the married couples filing returns in 1977 used the joint schedule. My bill would make separate taxation a genuine option for two-earner couples.

Mr. Chairman, this is a moderate proposal that I am putting forward. Many Members of the House have introduced bills which would allow all taxpayers to file on the same tax rate schedule. The revenue cost of such a system of "mandatory individual filing" would be rather severe — perhaps $25 billion annually or more.

My proposal would only cost between 5 and 8 billion dollars per year. There are many ways in which this revenue cost can be justified. As you know, the so-called "windfall profits tax" legislation which passed the House recently and was signed by the President this morning, set aside 60% of the projected $227 billion in revenues to be raised in the next decade for a cut in personal or corporate income taxes. This $227 billion comes in addition to the rather substantial unlegislated tax increases granted the Federal government every year as a result of inflation pushing people into higher tax brackets. I am proposing a moderate tax reduction that would be an ideal choice if a personal tax cut were to be enacted, because it eliminates one of the most serious and unpopular inequities in our present tax system, because it helps working families, and perhaps most importantly, because it eliminates the current significant disincentive to married women's entry into the work force.

Mr. Chairman, if a person married to a non-working spouse earns $10,000, under our current system that person would pay $702 in Federal income tax, if he or she does not itemize deductions. If that person's spouse were to go to work for the same salary, the tax bill for the couple would jump to $2,745 - for an effective tax on the second earner's $10,000 of $2,143. The couple quadruples its tax bill by doubling its income. Mr. Chairman, the United States is the only major industrialized nation in the free world in which the tax cost of the second earner's entry into the work force is higher than that of the first. As my friend and former colleague who is now the Mayor of New York said at hearings on this subject eight years ago, "Women are already victimized by a labor market that underpays them, they should not be further penalized by a tax structure that extracts higher taxes from them."

It is difficult to measure the effect of this work disincentive. But if we remove it, there is no question that women will enter the work force at an even faster rate than they are doing so already. In a sense, Mr. Chairman, this is a supply side tax cut, because we will be encouraging people to go to work. There will be more incomes to tax, which will help offset the projected revenue loss of optional individual taxation. Mr. Chairman, some of the revenue estimates for HR 3609 sound high because they are measuring income tax that would be collected from women who have yet to enter the work force on the joint schedule against that which would be collected if they are allowed to file separately from their husbands. But the fact that married women are entering the work force at an unprecedented rate should not be used to inflate the cost of my proposal, it should be used as a compelling argument against the marriage tax. This unfair tax already affects at least 16 million couples in this country, and it will affect many more in the years to come. So $5 billion or $7 billion is not the cost of my bill, it is the size of this unjust penalty.

My proposal could easily be phased in if this was necessary to mitigate the effect of its cost in light of the current budget atmosphere. As I explained earlier, eliminating the marriage tax merely involves the reduction of the tax rate schedule for marrieds who file separately so that it equals the rate schedule for singles. If the cost of a complete elimination of the difference between these two schedules is felt to be too much to absorb in one year, this difference could be phased out gradually. For example, suppose we decided that we could only afford to reduce revenue by $1 billion for the coming year. The difference between the single schedule and the married filing separately schedule could then be reduced by whatever percentage would yield that $1 billion - say, 15 percent or whatever it may be. The difference could then be steadily reduced until we reach the point in say, 1985, at which the two schedules are the same and the "marriage tax" has been eliminated. The key is to put the legislative vehicle for removing the "marriage tax" in place.

Once this is done, we can proceed as slowly as we would like. We could simply pass H.R. 3609 and amend it so that it does not take effect until next year or the year after that. But we must act. We must show the American public that we hear their complaints about this unfair tax.

Mr. Chairman, many theorists have outlined three basic principles of taxation. First, that a tax system should be progressive. Second, that it should tax all families with the same income equally. And third, that it should not tax individuals more heavily because of their marital status. Currently, we are sacrificing this third principle in order to be consistent with the first two. But should we be taxing all families at the same rate, regardless of who earns the income? Does a family in which the husband earns $40,000 and the wife stays home and provides various services have the same expenses as a family in which both the husband and wife work 40 hours a week to earn $20,000 each?

I would argue that they do not, Mr. Chairman. A two-earner family works 80 hours to earn the income that the one-earner family earns in 40. The two-income couple pays more for day care, transportation to and from work, work clothing, lunches (if it is not convenient to carry a brown bag to work), and perhaps home chores and repairs. There is no question in my mind that the value of homemaker's services in the home are quite considerable. It is, of course, very difficult to measure this value for tax purposes, and I would never propose to tax this "income." But the point is that the two-earner couple does not enjoy the luxury of these services. Most American families today need two incomes simply to make ends meet. We should not penalize them for something as necessary as a second income. According to a recent O.E.C.D. survey, every major democratic nation with an income tax, except the United States, distinguishes between one-earner and two-earner couples. I think that we must make this distinction.

It might be noted, Mr. Chairman, that under a system of mandatory individual filing, such as that proposed by Representative Collins in H.R. 207 of one-earner and two-earner couples would be even more pronounced then it would be under optional individual taxation. Again, I emphasize that mine is a moderate proposal.

As I have discussed on previous occasions, a system of optional individual taxation could be easily implemented. Two columns could appear on the Federal tax form, as they do now on several State income tax forms, to allow each spouse to be taxed individually on his or her own income. The use of such a "combined-separate" form would eliminate the added administrative costs that would be otherwise incurred by the Internal Revenue Service if it had to process millions of additional forms from those who would opt to file separately. In addition, it would allow the I.R.S. to check each spouse's return against the other's at a glance, thus eliminating the possibility of any double-claiming of deductions or exemptions.

"Combined-separate" forms are already in use in many States of the Union. I have attached forms from three States to the testimony that I am submitting to the Committee today. Many others, including Maryland, Virginia, New York, Wisconsin, and the District of Columbia, also use such forms. These states generally combine the balance due and overpayment between spouses who file separately on the same form. Such a feature might be well-suited to a Federal "combined-separate" form.

Mr. Chairman, the income tax systems in 11 States in this country contain no "tax on marriage." In these states — Alabama, Arizona, Kentucky, Illinois, Missouri, Montana, Minnesota, Oregon, South Carolina, Alaska, and West Virginia — the tax rates for the married filing separately schedule equal those for the singles schedule, and married couples retain the option of filing jointly. The forms which I have attached are from States belonging to this group. In Missouri, Minnesota, and Illinois, however, as well as in a host of other States, the Federal "tax on marriage" results in residents having to pay a state "tax on marriage," because they are required to file their state returns using the same status under which they filed for their Federal returns. Thus, Federal tax penalty has second order effects: it automatically creates penalties in States with otherwise equitable codes. If the Federal code were corrected, the "tax on marriage" in many States would be automatically eliminated.

What is interesting, Mr. Chairman, is that so many of these States which offer separate filing have adequately addressed the problem of allocating unearned income and itemized deductions between spouses. The States use a variety of systems for allocating such items, but the point is that many of them seem to have solved the problem satisfactorily.

The problem of allocating unearned income and various itemized deductions under a system of optional individual taxation has been raised frequently by those who oppose adoption of such a system. Because this issue has aroused such a great deal of concern, I have attached a technical appendix on this topic to my testimony. Much of the appendix is devoted to responding to specific points raised in the booklet prepared by the Joint Committee on Taxation that is scheduled to be released today or tomorrow. I have proposed to allocate unearned income and any itemized deductions arising from such income essentially in the same way that I suggested in a letter to you last November. These items would be allocated for tax purposes according to ownership, while personal exemptions and jointly owned items would be divided equally (50-50) between spouses. Community property laws would, of course, be over-ridden for the purpose of allocating both personal service and investment income.

As I have said in the past, however, I am not unyieldingly committed to this or any other approach for dividing interest income and itemized deductions. My chief aim is to eliminate the marriage tax for the vast body of two-wage earner couples who pay the marriage tax. A study by an I.R.S. economist estimated that of all the married couples paying the "marriage tax" in 1974, 74% made under $20,000 when both spouse's incomes were combined, while over 99% had combined incomes under $50,000. Current estimates from the Joint Committee on Taxation indicate that 79% of the couples paying the marriage tax in 1979 have combined incomes under $30,000, while 97% have combined incomes under $50,000. We are not talking about relief for well-to-do "two-lawyer" couples. Most of the people who would benefit from passage of H.R. 3609 do not even itemize their deductions. These couples, as I have said before, need two incomes simply to make ends meet.

Therefore, the most important change that needs to be made in the present tax code is the disaggregation of spouses' incomes for tax purposes. In addition, the zero bracket amount and the floor on itemized deductions should be the same for all individuals, married or single, since the current difference between the ZEBRA and floor applicable to single individuals ($2,300) and those applicable to married individuals ($1,700, or $3,400 for a joint return) contributes to the "marriage penalty."

Mr. Chairman, as you are undoubtedly aware, several other bills have been introduced recently which seek to correct the inequity which currently faces two-earner married couples. H.R. 6822, introduced by the Ranking Member of the Committee, Mr. Conable, provides a 10 percent deduction on the earned income of the spouse with the lesser of the two incomes, regardless of whether or not the couple itemized its deductions, up to a maximum deduction of $2,000. H.R. 6203, introduced by another distinguished Member of the Committee, Mr. Fisher, would provide a similar 10% deduction with a maximum deduction of $1,000.

H.R. 6798, introduced by my colleague from New Jersey, Mr. Patten, would provide a 10% tax credit on the secondary wage earner's earned income with a maximum credit of $500.

I am glad that these Members have decided to address this issue, but I do not feel that these bills provide an adequate solution to the "marriage tax" problem.

First and most importantly, they do not completely eliminate the penalty. Under the deduction approach a couple earning only $3,750 each still pays 50% more tax if they are married than if they are single. A couple earning $25,000 each still pays a "marriage tax" of $1,694 each year. There would still be a significant number of couples lobbying for elimination of the tax. There would still be couples getting divorced or deferring marriage in order to save on taxes. There would still be couples, like those testifying here before you today, who would fly to the Carribean for year end divorces or set up "tax divorce" services. We must put an end to these dislocations by eliminating the "marriage tax" completely.

In addition, deductions and credits for the second earner would make the tax code more, rather than less complicated. Some couples would surely be confused to learn that they can claim a deduction even when they are not itemizing deductions. Eliminating the penalty altogether would allow the I.R.S. to reduce the number of schedules, while enactment of a deduction or credit would simply increase the number of provisions in the code.

In some cases, providing a 10% deduction on the second earner's income would grant relief to couples who do not currently face a penalty. As you know, two-earner couples are only penalized for marriage when the income of one spouse is approximately 20% or more of the couple's total income. If a flat 10% deduction were to be provided to the second earner, the marriage bonus would be increased for couples with vastly different incomes.

Finally, Mr. Chairman, limited deductions and credits for the second earner are troubling because they penalize wives for achieving what their husbands have achieved. One the one hand, we have said that a social goal in this country is to have equal salaries for men and women, and on the other we would be penalizing the wife who makes an equal salary. In effect, we would be providing a bonus only for those wives who "stay in their place."

The chief argument in favor of these alternative proposals is that their revenue costs are more palatable. Using the phased-in approach which I outlined earlier, however, my bill could be made to yield the same revenue loss in the first year or any other year. And it would put the legislative vehicle in place for moving toward a complete solution of the problem. My friend and colleague from Virginia, Mr. Fisher, recently wrote that he hopes that "eventually the tax code will be blind with regard to marital status." If this is our goal, Mr. Chairman, then it would seem that enactment of H.R. 3609 is the appropriate first step.

Figures released just yesterday by the Census Bureau indicate that the divorce rate has increased by 96% in the last decade. In addition, the Census Bureau reports that there are now 1.3 million couples of the opposite sex living together, a 149% increase since 1970. While these numbers skyrocket, our tax system discourages marriage and families. This is neither prudent nor sensible.

H.R. 3609 would not affect the tax rates for single individuals, nor would it prevent married couples with only one-earner or with vastly different incomes from reaping the benefits of joint filing. It would not allow two-earner couples to pay less taxes than single individuals with comparable incomes, it would merely eliminate the requirement that they pay more.

Mr. Chairman and members of the Committee, I plead with you to take action to end the "marriage tax." And I both commend you for discussing this issue here today, and thank you for allowing me to present my views to you.

Kearneysville, W.Va. 25430

July 31, 1979

The Honorable Millicent Fenwick
U.S. House of Representatives
Washington, D.C. 20515

Dear Ms. Fenwick:

I am writing you to support your efforts against the "marriage tax." I have a personal interest in this legislation, since it is the major reason my fiance and I have not married as yet. Aside from that, I have found during the past few years that it is amazing the number of married working couples who do not realize that they pay more taxes by having to file as married than they would if it were possible for them to file as single persons. When I discussed this, they were shocked at the difference - somewhere along the way they had been led to believe "two can live as cheaply as one." Not so where income taxes are concerned!

Of course, there are some who feel that "money" should be no object when it comes to the question of getting married. Yet there would probably be very few of these people who would object to a reduction in their taxes. Moral issues become involved, and those of us who choose to remain single due to the tax situation face demoralization from family, "friends", etc.

With your efforts and those of your co-sponsors, the news media, and other interested persons, working married couples are beginning to see the advantage of filing as single persons. Please let me encourage you to continue to seek passage of this important legislation.

Sincerely,

New York, New York 10011

July 3, 1979

Hon. Millicent Fenwick
United States house of Representatives
Longworth House Office Building
Washington, D. C. 20515

Hon. Charles McC. Mathias, Jr.
United States Senate
Russell Senate Office Building
Washington, D. C. 20510

Dear Madam and Sir:

Thank you for your efforts to abolish the "marriage tax". If you are collecting statistics, you can count at least two people who would be married if it were not for such tax. A simple way to keep the benefits of the present system for those whom it was designed to serve, i.e., a family with one "breadwinner", without penalizing the increasing number of couples with both spouses working, is to give persons the right to choose to file under the married or single tax rates.

Again, on behalf of myself and the people I know who are not presently married because of the "marriage tax", thank you for your efforts. I hope success is at hand.

Yours truly,

Somerville, N.J. 08807

Ms. Millicent Fenwick
Congresswoman
41 North Bridge Street
Somerville, N.J. 08876

Dear Ms. Fenwick,

I'm sure that around this time of year ("tax" time), you get a lot of letters, phone calls, etc. complaining about taxes. However, even though this letter may, for all practical purposes, be called a typical "tax complaint" letter, I sincerely believe I have good reason to complain....or at least to ask a simple question.

The question is, "Why do married people have to pay more taxes than single people?" I'm sure you've heard it often before, but for the life of me, I cannot understand what the justification for this is, and I'm writing to you because no one has given me a reasonable answer.

My husband and I were married on September 16, 1978. Last year, as the year before, we both received refunds from the U.S. government at tax time. His refund amounted to something like $300.00, and mine came to approximately $250.00. This year, we are earning, at most, an extra $300.00 than we did the year before. I figured out our taxes this morning, and was appalled to discover that we are required to pay $152.51!!! (filing a joint return...filing separately, we'd have to pay a total of $255.51!) Then I looked at the tax tables looked in the back of our form booklets. Using the same salaries for each of us; but assuming we were living together (therefore classified as "single", according to Uncle Sam) we'd get refunded a grand total of $261.49!!!

What is the rationale behind this? Why are the tax tables constructed in such a way as to require married persons to pay more tax? I use the same roads---enjoy the same rights, priveledges, etc. accorded to me by the U.S. government because I am an American citizen as I did last year. I am not more of a drain upon the government because I am married. And yet, because I chose to legally live the rest of my life with another person, my tax is now $1,426.00; whereas if I were "living" with my husband, my tax would only be $1,194.00 (a difference of $232.00!)

Please understand that my complaining is not because I am "anti-American", or "anti-Carter", or anything of that nature. I am aware that the problem I am mentioning has existed for many years. My questions are simply these:

1. What was the rationale behind constructing the "married" tax tables so they are requiring more taxes to be paid than the "single" tax tables in the first place? (I'm sure there MUST have been a reason--one that was considered a "good" reason, also).

2. What steps will have to be taken to correct this injustice? (I have been told to "buy a house", "try to find a loophole by filing a long form", "accumulate more medical expenses", etc....but I have no intentions of trying to "weasel" my way out of this. I believe I have the right to live my own life as I see fit, and I can't see buying a house just to get a refund from Uncle Sam, or "living together" so I'll get a refund.)

3. Is the U.S. government trying to encourage "living together"? One person I know told me the only way "out" is to get a quickie divorce in Mexico, and then just live with my husband. Is this what our country is coming to?

Ms. Fenwick, I would appreciate any information you can give me on this matter. I am willing to start my own "married people" campaign if need be. Your help on this matter would sincerely be appreciated, as I have heard you are an out-spoken, independent politician who sincerely wants to help her constituents. I need that help. My husband and I are wondering where we're going to get the $152.51 we now owe the government, and we're also very, very confused. We have just recently moved to the Somerville area (due to our marriage) from Hunterdon County, and are registered voters. You can count on our votes if you can do anything to help us.

Thanks for listening,

Sincerely,

Somerset, N.J. 08873
March 18, 1980

The Hon. Millicent Fenwick
1212 Longworth Building
Washington, D.C. 20515

Re: Marriage Tax Bill

Dear Assemblywoman Fenwick:

My husband and I have been long time Somerset County followers of yours and at this time want to add our support for the Marriage Tax Bill which you are working on.

It is most depressing when a couple, happily married must think of divorce only because they cannot afford to pay Federal Income Tax. This is a decision we are now faced with after 14 years of marriage. We both work, my husand is self employed and I work for the Somerset County Park Commission, we have no children and our income is about $40,000 a year. This year we are faced with paying $8,999 in income tax which is more than half of what I make.

We both have to work in order to keep our house, pay high fuels and if we are lucky take a week's vacation. Every time April 15 rolls around we find ourselves depleting our savings account and taking a loan to pay taxes. We cannot go on like this.

Is it better to sit home, collect unemployment, welfare and other assistance in order not to pay taxes. This is what our economy and government is forcing people to do. The government is certainly discouraging the age old tradition of marriage. I believe in paying our fair share but the middle income, working married couples are being unfairly treated and now must resort to degrading methods for survival.

Any assistance we can give you, we will. I know that a hearing is scheduled for April 2, unfortunately we cannot be present to testify. Good luck.

Very truly yours,

Wiggins, Mississippi 39577
November 25, 1979

Dear Millicent Fenwick,

Thanks for working for this. We know a very dear couple living together who would marry in a minute if they could afford to but with three children between them they feel they need that money and the moral "side" is being pushed aside with the remark "A lot of couples are doing it" which doesn't make it right to me but makes sense to them.

Thanks again,

Glendale, Wisconson 53209
June 30, 1979

Rep. Millicent Fenwick,

Thank you! Thank you for introducing the bill to end the tax inequity against married working couples. Would you please send me a copy of the bill so I can see the details?

If the bill doesn't pass I plan to file as a single person and my wife as a single person and tell the IRS that we won't pay the higher rates & they can sue us. and they will---and I'll probably have to pay.

But thanks again!

Washington, D.C. 20036
August 14, 1979

Dear Ms. Fenwick:

I understand that you have introduced legislation to eliminate the "tax on marriage." I most heartily support your efforts and wish there were more I could do than merely applaud.

I am an attorney. I would like to marry another attorney. We cannot afford to do so because of the additional tax burden imposed. I am still paying off the education loans which made it possible to go to college and law school. I make a good salary, but I just cannot see my already-substantial income tax increased any more. I realize it is just as easy to regard the assessment as being against the husband's salary - but that isn't what happens in the real world. My career becomes an expensive luxury instead of a means of supporting myself. Tell me how I can help.

Houston, Texas 77056
July 9, 1979

Represenative Millicent Fenwick
Longworth House Office Bldg.
Washington, D.C. 20510

JU[illegible] 1979

Dear Represenative Fenwick:

I am a 25 year old U.S. constituent who advocates tax relief for married working couples. My boyfriend and I would have paid $2,000.00 more in taxes this year had we been married. We anticipate marriage however, the tax structure discriminates unfairly against married working couples and until this inequity is corrected I expect we will continue to live together without the other benefits of a legitimized relationship.

I would appreciate names and addresses of other men and women in office who I might write on this matter.

Your support of tax relief for married working couples is of great value.

Sincerely,

COSPONSORS OF HR 3609 IN THE 96th CONGRESS

Abdnor, James (R-SD)
Addabbo, Joseph (D-NY)
Anderson, John (R-ILL)
Applegate, Douglas (D-OH)
Ashbrook, John (R-OH)
Badham, Robert E. (R-CA)
Baldus, Alvin (D-WIS)
Barnard, Doug (D-GA)
Barnes, Michael (D-MD)
Bauman, Robert (R-MD)
Beard, Edward (D-RI)
Bedell, Berkley (D-IA)
Benjamin, Adam (D-IND)
Bereuter, Douglas (R-NEB)
Bethune, Edwin, Jr. (R-ARK)
Bingham, Jonathan (D-NY)
Blanchard, James (D-MI)
Boggs, LIndy (D-LA)
Boland, Edward (D-MA)
Boner, Bill (D-TENN)
Bouquard, Marilyn Lloyd (D-TENN)
Bowen, David (D-MISS)
Brown, Clarence (R-OH)
Broyhill, James (D-NC)
Buchanan, John (R-ALA)
Burgener, Claire (R-CA)
Byron, Beverly B. (D-MD)
Campbell, Carroll A. Jr. (R-SC)
Carney, William (R-NY)
Carter, Tim Lee (R-KY)
Chappell, Bill, Jr. (D-FL)
Chisholm, Shirley (D-NY)
Clausen, Don (R-CA)
Clay, William (D-MO)
Cleveland, James (R-NH)
Clinger, William, Jr. (R-PA)
Coelho, Tony (D-CA)
Coleman, Tom (R-MO)
Collins, James (R-TEX)
Conte, Silvio (R-MA)
Corcoran, Tom (R-ILL)
Corrada, Baltasar (D-PR)
Coughlin, Lawrence (R-PA)
Courter, James (R-NJ)
Crane, Phil (R-ILL)
D'Amours, NOrman (D-NH)
Daniel, Dan (D-VA)
Dannemeyer, William (R-CA)
Daschle, Thomas (D-SD)
Davis, Bob (R-MI)
de la Garza, E. (D-TEX)
Dellums, Ronald (D-CA)
Derwinski, Edward (R-ILL)
Devine, Samuel (R-OH)
Diggs, Charles, Jr. (D-MI)
Dixon, Julian (D-CA)
Donnelly, Brian (D-MA)
Dornan, Robert K. (R-CA)
Downey, Thomas (D-NY)
Duncan, John (R-TENN)
Duncan, Robert (D-OR)
Edgar, Robert (D-PA)
Edwards, Don (D-CA)
Edwards, Jack (R-ALA)
Edwards, Mickey (R-OK)
Emery, Dave (R-ME)
Erdahl, Arlen (R-MINN)
Ertel, Allen (D-PA)
Evans, Billy Lee (D-GA)
Evans, David (D-IND)
Evans, Melvin (D-V.I.)
Evans, Thomas (R-DEL)
Fascell, Dante (D-FLA)
Fazio, Vic (D-CA)
Ferraro, Geraldine (D-NY)
Findley, Paul (R-ILL)
Fish, Hamilton, Jr. (R-NY)
Fithian, Floyd (D-IND)
Florio, James J. (D-NJ)
Ford, Harold (D-TENN)
Forsythe, Edwin B. (R-NJ)
Fountain, L.H. (D-NC)
Frenzel, Bill (R-MINN)
Frost, Martin (D-TEX)
Giaimo, Robert (D-CT)
Gibbons, Samuel (D-FLA)
Gilman, Benjamin (R-NY)
Gingrich, Newt (R-GA)
Ginn, Bo (D-GA)
Glickman, Dan (D-KS)
Goldwater, Barry, Jr. (R-CA)
Gramm, Phil (D-TEX)
Grassley, Charles (R-IA)
Gray, William III (D-PA)
Green, S. William (R-NY)
Guarini, Frank (D-NJ)
Gudger, Lamar (D-NC)
Guyer, Tennyson (R-OH)
Heckler, Margaret M. (R-MASS)
Hinson, Jon (R-MISS)
Holt, Marjorie (R-MD)
Holtzman, Elizabeth (D-NY)

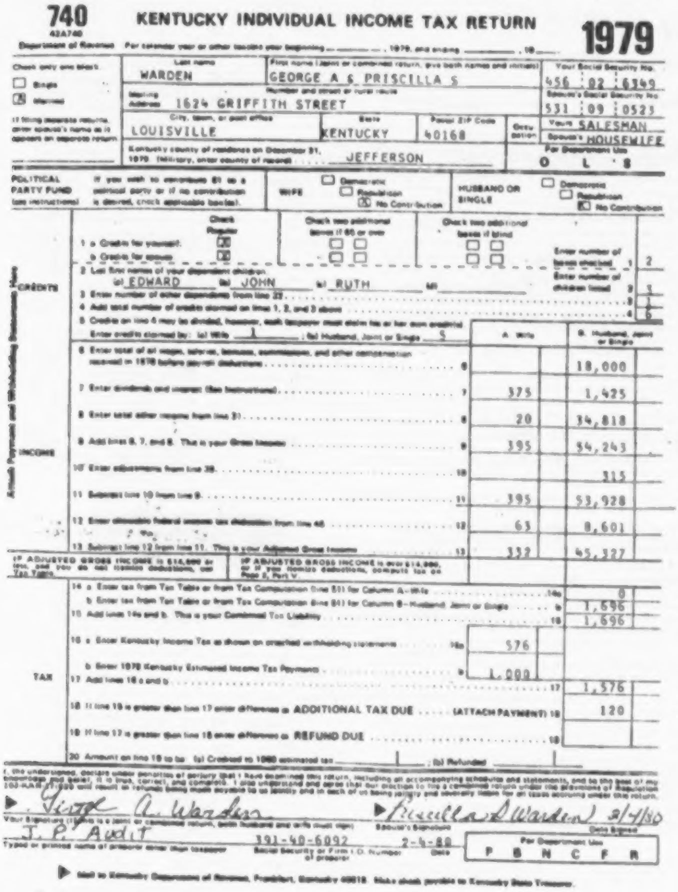
Cosponsors - Continued

Hopkins, Larry (R-KY)
Horton, Frank (R-NY)
Howard, James J. (D-NJ)
Hubbard, Carroll (D-KY)
Huckaby, Jerry (D-LA)
Hyde, Henry (R-ILL)
Jeffords, Jim (R-VT)
Jenrette, John W., Jr. (D-SC)
Kastenmeier, Robert (D-WIS)
Kemp, Jack (R-NY)
Kindness, Thomas N. (R-OH)
Kogovsek, Ray (D-CO)
Kostmayer, Peter (D-PA)
LaFalce, John (D-NY)
Lagomarsino, Robert (R-CA)
Leach, Claude (D-LA)
Leach, Jim (R-IA)
Lee, Gary (R-NY)
Lehman, William (D-FL)
Leland, George Thomas (D-TEX)
Lent, Norman (R-NY)
Lewis, Jerry (R-CA)
Livingston, Bob (R-LA)
Long, Clarence (D-MD)
Lott, Trent (R-MISS)
Luken, Thomas A. (D-OH)
Lungren, Dan (R-CA)
Madigan, Edward (R-ILL)
Markey, Edward J. (D-MA)
Marks, Mark (R-PA)
Marriott, DAn (R-UT)
Martin, James (R-NC)
Mathis, Dawson (D-GA)
Matsui, Rovert T. (D-CA)
Mattox, Jim (D-TEX)
Marroules, Nicholas (D-MASS)
Mazzoli, Romano (D-KY)
McClory, Robert (R-ILL)
McCloskey, Paul, Jr. (R-CA)
McKay, Gunn (D-UT)
Mikulski, Barbara (D-MD)
Mikva, Abner (D-ILL)
Miller, Clarence (R-OH)
Minish, Joseph (D-NJ)
Mitchell, Don (R-NY)
Mitchell, Parren (D-MD)
Mollohan, Robert (D-WVA)
Montgomery, G.V. Sonny (D-MISS)
Mottl, Ronald (D-OH)
Murphy, John (D-NY)
Murphy, Morgan (D-ILL)
Neal, Stephen (D-NC)
Oaker, Mary Rose (D-OHIO)
Oberstar, James (D-MINN)
O'Brien, George (R-ILL)
Ottinger, Richard (D-NY)
Panetta, Leon (D-CA)
Pashayan, Charles (R-CA)
Patten, Edward (D-NJ)
Patterson, Jerry (D-CA)
Paul, Ron (R-TEX)
Pepper, Claude (D-FL)
Petri, Thomas (R-WIS)
Porter, John Edward (R-ILL)
Preyer, Richardson (D-NC)
Price, Melvin (D-ILL0
Pritchard, Joel (R-WA)
Pursell, Carl (R-MI)
Quayle, Dan (R-IND)
Quillen, James H. (R-TENN)
Railsback Tom (R-ILL)
Richmond, Frederick (D-NY)
Ritter, Dan (R-PA)
Robinson, J. Kenneth (R-VA)
Roe, Robert (R-NJ)
Rosenthal, Benjamin (D-NY)
Rousselot, John (R-CA)
Royer, William (R-CA)
Santini, Jim (D-NEV)
Sawyer, Harold (R-MI)
Scheuer, James (D-NY)
Schroeder, Patricia (D-CO)
Schulze, Richard (R-PA)
Shuster, Bud (R-PA)
Sebelius, Keith (R-KS)
Seiberling, John (D-OH)
Shumway, NOrman (D-CA)
Slack, John (D-WVA)
Snowe, Olympia (R-ME)
Solomon, Gerald (R-NY)
Spence, Floyd (R-SC)
Stangeland, Arlan (R-MINN)
Stanton, William (R-OH)
Stockman, Dave (R-MI)
Stokes, Louis (D-OH)
Studds, Gerry (D-MA)
Swift, AL (D-WA)
Tauke, Tom (R-IA)
Thomas, William M. (R-CA)
Traxler, Bob (D-MI)
Trible, Paul, Jr. (R-VA)
Van Deerlin, Lionel (D-CA)
Vander Jagt, Guy (R-MI)
Walgren, Doug (D-PA)
Waxman, Henry A. (D-CA)
Whitehurst, G. William (R-VA)

Cosponsors - Continued

Williams, Lyle (R-OH)
Williams, Pat (D-MONT)
Wilson, Bob (R-CA)
Wilson, Charles H. (D-CA)
Winn, Larry, Jr. (R-KS)
Wolff, Lester (D-NY)
Wolpe, Howard (D-MI)
Wright, James (D-TEX)
Wydler, John (R-NY)
Wylie, Chalmers (R-OH)
Yatron, Gus (D-PA)
Young, Don (R-AL)
Young, Robert D-MO)
Zeferetti, Leo (D-NY)

[¶ 13-364] [The original of Form 42A740 is 8½" × 11"—2 pages.]



740
42A740
Department of Revenue

KENTUCKY INDIVIDUAL INCOME TAX RETURN 1979

For calendar year or other taxable year beginning ________, 1979, and ending ________, 19__.

Check only one block: ☐ Single ☒ Married

If filing separate returns, enter spouse's name as it appears on separate return. ________

Last name: WARDEN

First name (joint or combined return, give both names and initials): GEORGE A & PRISCILLA S

Your Social Security No.: 456 02 6349

Mailing Address (Number and street or rural route): 1624 GRIFFITH STREET

Spouse's Social Security No.: 531 09 0523

City, town, or post office: LOUISVILLE

State: KENTUCKY

Postal ZIP Code: 40168

Occupation: Yours: SALESMAN; Spouse's: HOUSEWIFE

Kentucky county of residence on December 31, 1979 (Military, enter county of record): JEFFERSON

For Department Use: O L S

POLITICAL PARTY FUND (see instructions): If you wish to contribute $1 to a political party or if no contribution is desired, check applicable box(es).

WIFE: ☐ Democratic ☐ Republican ☒ No Contribution

HUSBAND OR SINGLE: ☐ Democratic ☐ Republican ☒ No Contribution

CREDITS

	Check Regular	Check two additional boxes if 65 or over	Check two additional boxes if blind			
1 a Credits for yourself	☒	☐ ☐	☐ ☐	Enter number of boxes checked	1	2
b Credits for spouse	☒	☐ ☐	☐ ☐			

2 List first names of your dependent children: (a) EDWARD (b) JOHN (c) RUTH (d) ________ Enter number of children listed 2 3

3 Enter number of other dependents from line 22 .... 3 1

4 Add total number of credits claimed on lines 1, 2, and 3 above 4 6

5 Credits on line 4 may be divided, however, each taxpayer must claim his or her own credit(s). Enter credits claimed by: (a) Wife 1 ; (b) Husband, Joint or Single 5

INCOME

	Line	A. Wife	B. Husband, Joint or Single
6 Enter total of all wages, salaries, bonuses, commissions, and other compensation received in 1979 before payroll deductions	6		18,000
7 Enter dividends and interest (See Instructions)	7	375	1,425
8 Enter total other income from line 31	8	20	34,818
9 Add lines 6, 7, and 8. This is your Gross Income	9	395	54,243
10 Enter adjustments from line 38	10		315
11 Subtract line 10 from line 9	11	395	53,928
12 Enter allowable federal income tax deduction from line 46	12	63	8,601
13 Subtract line 12 from line 11. This is your Adjusted Gross Income	13	332	45,327

IF ADJUSTED GROSS INCOME is $14,000 or less, and you do not itemize deductions, use Tax Table.

IF ADJUSTED GROSS INCOME is over $14,000, or if you itemize deductions, compute tax on Page 2, Part V.

TAX

	Line		
14 a Enter tax from Tax Table or from Tax Computation (line 51) for Column A—Wife	14a		0
b Enter tax from Tax Table or from Tax Computation (line 51) for Column B—Husband, Joint or Single	b		1,696
15 Add lines 14a and b. This is your Combined Tax Liability	15		1,696
16 a Enter Kentucky Income Tax as shown on attached withholding statements	16a	576	
b Enter 1979 Kentucky Estimated Income Tax Payments	b	1,000	
17 Add lines 16 a and b	17		1,576
18 If line 15 is greater than line 17 enter difference as ADDITIONAL TAX DUE ...... (ATTACH PAYMENT)	18		120
19 If line 17 is greater than line 15 enter difference as REFUND DUE	19		

20 Amount on line 19 to be: (a) Credited to 1980 estimated tax ________ ; (b) Refunded ________

[illegible]

▶ George A. Warden ▶ Priscilla S Warden 2/4/80

Your Signature (if this is a joint or combined return, both husband and wife must sign) — Spouse's Signature — Date Signed

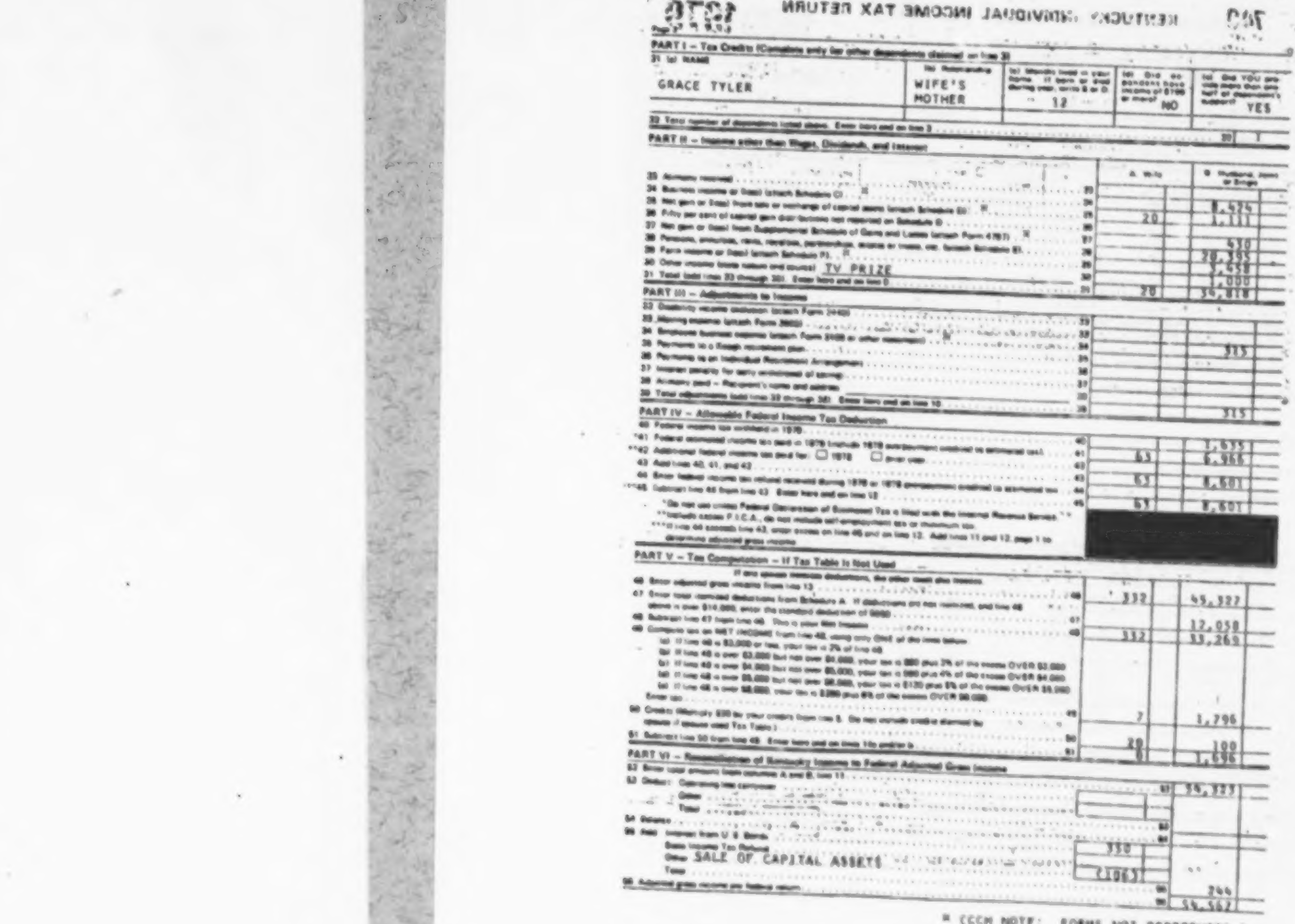
J. P. Audit — 391-40-6092 — 2-4-80

Typed or printed name of preparer other than taxpayer — Social Security or Firm I.D. Number of preparer — Date

For Department Use: P B N C F R

▶ Mail to Kentucky Department of Revenue, Frankfort, Kentucky 40618. Make check payable to Kentucky State Treasurer.

[¶ 13-364]—Continued



PART I – Tax Credits (Complete only for other dependents claimed on line 3)

21 (a) NAME	(b) Relationship	(c) Months lived in your home. If born or died during year, write B or D.	(d) Did dependent have income of $750 or more?	(e) Did YOU provide more than one-half of dependent's support?
GRACE TYLER	WIFE'S MOTHER	12	NO	YES

22 Total number of dependents listed above. Enter here and on line 3 .... 22 | 1

PART II – Income other than Wages, Dividends, and Interest

Line	A. Wife	B. Husband, Joint or Single
23 Alimony received		
24 Business income or (loss) (attach Schedule C) *		8,474
25 Net gain or (loss) from sale or exchange of capital assets (attach Schedule D) *	20	1,111
26 Fifty per cent of capital gain distributions not reported on Schedule D		
27 Net gain or (loss) from Supplemental Schedule of Gains and Losses (attach Form 4797) *		410
28 Pensions, annuities, rents, royalties, partnerships, estates or trusts, etc. (attach Schedule E) *		20,395
29 Farm income or (loss) (attach Schedule F) *		3,458
30 Other income (state nature and source) TV PRIZE		1,000
31 Total (add lines 23 through 30). Enter here and on line 9	20	34,848

PART III – Adjustments to Income

Line	A. Wife	B. Husband, Joint or Single
32 Disability income exclusion (attach Form 2440)		
33 Moving expense (attach Form 3903)		
34 Employee business expense (attach Form 2106 or other statement) *		315
35 Payments to a Keogh retirement plan		
36 Payments to an Individual Retirement Arrangement		
37 Interest penalty for early withdrawal of savings		
38 Alimony paid – Recipient's name and address		
39 Total adjustments (add lines 32 through 38). Enter here and on line 10		315

PART IV – Allowable Federal Income Tax Deduction

Line	A. Wife	B. Husband, Joint or Single
40 Federal income tax withheld in 1978		1,635
*41 Federal estimated income tax paid in 1978 (include 1978 overpayment credited to estimated tax)	63	6,966
**42 Additional federal income tax paid for: ☐ 1978 ☐ prior year		
43 Add lines 40, 41, and 42	63	8,601
44 Enter federal income tax refund received during 1978 or 1978 overpayment credited to estimated tax		
***45 Subtract line 44 from line 43. Enter here and on line 12	63	8,601

*Do not use unless Federal Declaration of Estimated Tax is filed with the Internal Revenue Service.

**Include excess F.I.C.A., do not include self-employment tax or minimum tax.

***If line 44 exceeds line 43, enter excess on line 45 and on line 12. Add lines 11 and 12, page 1 to determine adjusted gross income.

PART V – Tax Computation – If Tax Table Is Not Used

If one spouse itemizes deductions, the other must also itemize.

Line	A. Wife	B. Husband, Joint or Single
46 Enter adjusted gross income from line 13	332	45,327
47 Enter total itemized deductions from Schedule A. If deductions are not itemized, and line 46 above is over $10,000, enter the standard deduction of $650		12,058
48 Subtract line 47 from line 46. This is your Net Income	332	33,269
49 Compute tax on NET INCOME from line 48, using only ONE of the lines below: (a) If line 48 is $3,000 or less, your tax is 2% of line 48 (b) If line 48 is over $3,000 but not over $4,000, your tax is $60 plus 3% of the excess OVER $3,000 (c) If line 48 is over $4,000 but not over $5,000, your tax is $90 plus 4% of the excess OVER $4,000 (d) If line 48 is over $5,000 but not over $8,000, your tax is $130 plus 5% of the excess OVER $5,000 (e) If line 48 is over $8,000, your tax is $280 plus 6% of the excess OVER $8,000 Enter tax	7	1,796
50 Credits (Multiply $20 by your credits from line 5. Do not include credits claimed by spouse if spouse used Tax Table.)	20	100
51 Subtract line 50 from line 49. Enter here and on lines 14a and/or b	0	1,696

PART VI – Reconciliation of Kentucky Income to Federal Adjusted Gross Income

52 Enter total amount from columns A and B, line 11		52	54,327
53 Deduct: Operating loss carryover			
Other			
Total		53	
54 Balance		54	
55 Add: Interest from U. S. Bonds			
State Income Tax Refund	350		
Other SALE OF CAPITAL ASSETS	(106)		
Total		55	244
56 Adjusted gross income per federal return		56	54,567

* (CCH NOTE: FORMS NOT REPRODUCED.)

[¶ 13-365]—Continued

COMPUTATION OF FEDERAL INCOME TAX DEDUCTION AND REFUND

The federal income tax deduction is limited to federal income tax paid on income taxed by Kentucky. Federal tax paid on income not taxed by Kentucky (U. S. government bond interest, etc.) is not deductible.

Enter: (a) On line 40, the federal income tax withheld by your employer; (b) On line 41, the federal estimated income tax payments or credits during 1979; (c) On line 42, the additional federal income tax payments during 1979 for the tax year 1978 or prior years. Include on line 42, excess F.I.C.A. and non-highway federal gasoline tax credited against federal income tax.

Married Persons Filing Separate Returns — If a joint federal income tax return was filed for any year for which you paid additional tax during 1979, and separate Kentucky income tax returns were filed, the total additional tax paid must be divided between you and your husband or wife on the basis of the ratio of the gross income of each of you to your joint total gross income.

EXAMPLE: A 1978 joint federal income tax return was filed in 1979 reporting $6,000 gross income. In addition to your federal tax withheld, you paid an additional $40 in 1979. You and your spouse filed separate 1978 Kentucky income tax returns; you reported $4,500 or 3/4 of the $6,000 joint income, and your spouse reported $1,500, 1/4 of the joint income.

Enter $30 on line 42, Form 740 (3/4 of the total additional federal income tax paid for 1978) and your spouse must enter $10 (1/4 of the total additional tax paid).

Federal income tax refunds received during 1979 or 1978 overpayment credited to estimated tax must be entered on line 44.

Married Persons Filing Separate Returns — If a joint federal income tax return was filed for any year for which you received a refund during 1979, and separate Kentucky income tax returns were filed, the total refund must be divided between you and your husband or wife on the basis of the ratio of the gross income of each of you to your joint total gross income.

EXAMPLE: A 1978 joint federal income tax return was filed in 1979 reporting $7,500 gross income. A federal income tax refund was received during 1979 in the amount of $150. You and your spouse filed separate 1978 Kentucky income tax returns; you reported $5,000 gross income or 2/3 of the total joint income and your spouse $2,500, 1/3 of the total joint income.

Enter $100 on line 44, (2/3 of the total $150 federal income tax refund received) and your spouse must enter $50 (1/3 of the total refund).

NOTE: If line 44 exceeds line 43, enter the excess on line 45, and on line 12. Since net result is an overpayment, add lines 11 and 12 to determine Adjusted Gross Income.

TAX COMPUTATION

(a) Single Taxpayer — A single taxpayer may compute his Kentucky tax liability using one of the following methods:
- (1) Itemize deductions and use the tax computation in Part V, Form 740, regardless of income;
- (2) Use the tax table if adjusted gross income is $14,000 or less; or
- (3) Claim the $650 standard deduction if the adjusted gross income is over $14,000, and compute tax liability in Part V.

(b) Married Taxpayers — Married taxpayers filing separately on a combined return may compute their Kentucky tax liability using one of the following methods:
- (1) Both taxpayers itemize deductions, regardless of income, and compute their tax liability in Part V. (If one spouse itemizes, the other must also itemize);
- (2) Both taxpayers, if each of their adjusted gross income is $14,000 or less, determine tax liability from the tax table;
- (3) Both taxpayers, if each of their adjusted gross incomes is over $14,000, claim the $650 standard deduction and compute tax liability in Part V; or
- (4) One spouse with adjusted gross income of over $14,000 claims the $650 standard deduction and computes tax liability in Part V; the other spouse with adjusted gross income of $14,000 or less determines tax liability from the tax table.

Income Averaging Method — If you compute your federal income tax using the income averaging method, and if your Kentucky averagable income is more than $3,000, you may compute your Kentucky tax using the federal income averaging method. If the average base period income is $8,000 or more, no tax savings will result by averaging.

Schedule G may be used to make all computations, or a separate schedule may be attached.

The federal rules apply except:

(a) A person must have been a Kentucky resident during all of the computation year and the four preceding years;

(b) Taxable income is Kentucky net income or, if the tax table is used during the base period, taxable income for 1976, 1977 and 1978 is adjusted gross income minus the standard deduction of $650. The taxable income for the remaining base years is adjusted gross income minus the standard deduction of ten per cent (maximum $500); and

(c) The tax credits for dependents are not to be considered in computing adjusted taxable income.

SCHEDULE A INSTRUCTIONS — ITEMIZED DEDUCTIONS

ITEMIZED DEDUCTIONS — GENERAL

Married Persons Who File a Joint Federal Income Tax Return and Who are Filing Separately for Kentucky Income Tax Purposes on This Combined Form — If you and your spouse file a joint 1978 federal income tax return with itemized deductions and elect to itemize deductions on your 1978 Kentucky return, the deductions may be computed by either of the following methods:

©1980, Commerce Clearing House, Inc.

Missouri provides an example of the second order effects of the Federal "tax on marriage." The tax rates on the "married filing separately" schedule in Missouri equal those on the "single" schedule, so that there is not necessarily a marriage penalty. Most married couples in Missouri do, however, pay a "marriage tax" because they are required to file their state forms using the same filing status that they used on their Federal return. This results in most married couples filing jointly.

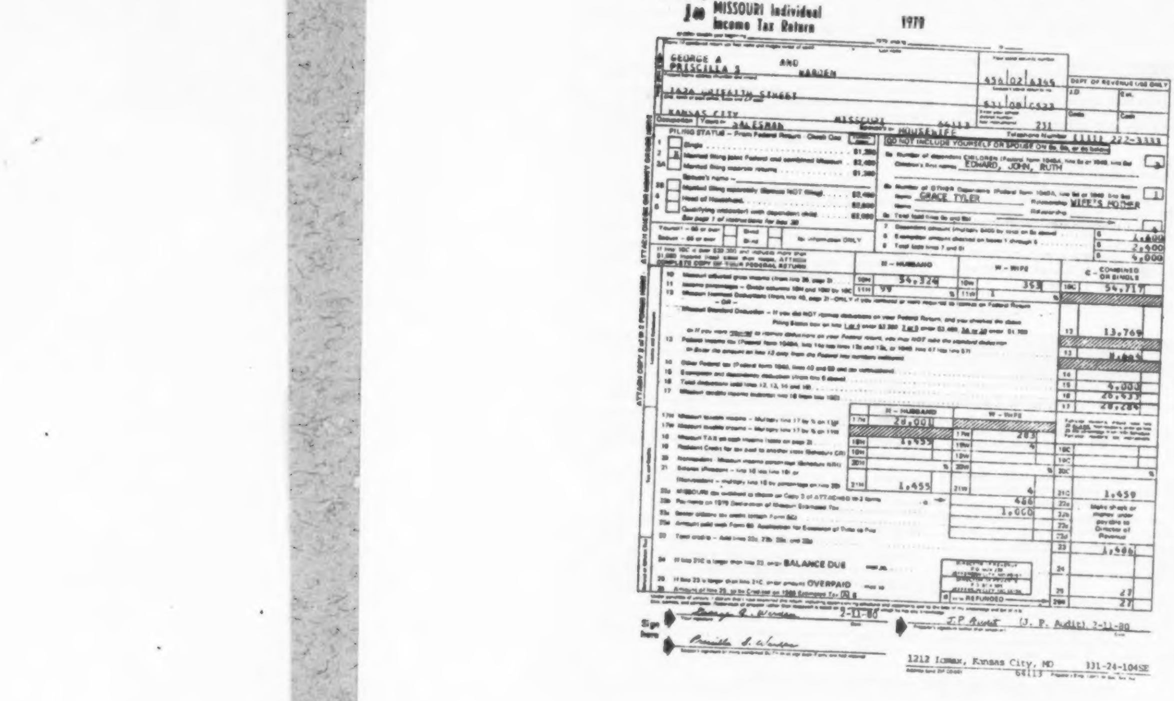
352 2-80

Mo.—Income Tax—Form 40

1535

[¶ 13-490]

[The original of Form 40 is 8½" × 11"—2 pages.]



MISSOURI Individual Income Tax Return

1979

GEORGE A AND PRISCILLA S WARDEN

[illegible] STREET

KANSAS CITY MISSOURI 64113

456|02|6345

531|08|6523

231

Yours – SALESMAN

Spouse's – HOUSEWIFE

Telephone Number (111) 222-3333

FILING STATUS – From Federal Return · Check One

1 ☐ Single $1,200

2 ☒ Married filing joint Federal and combined Missouri $2,400

3A ☐ Married filing separate returns $1,200

3B ☐ $2,400

4 ☐ Head of Household $2,400

5 ☐ $2,000

DO NOT INCLUDE YOURSELF OR SPOUSE ON 6a, 6b, or 6c below

6a Children's first names EDWARD, JOHN, RUTH 3

6b Name GRACE TYLER Relationship WIFE'S MOTHER 1

6c 4

7 1,600

8 2,400

9 4,000

	H – HUSBAND	W – WIFE	C – COMBINED OR SINGLE
10	10H 54,324	10W 393	10C 54,717
11	11H 99 %	11W 1 %	

12 13,769

13 [illegible]

15 4,000

16 26,433

17 28,284

	H – HUSBAND	W – WIFE
17	17H 28,001	17W 283
18	18H 1,455	18W 4
21	21H 1,455	21W 4

21C 1,459

22a 466

22b 1,000

23 1,466

24 BALANCE DUE

25 OVERPAID 27

26 REFUNDED 27

Sign here

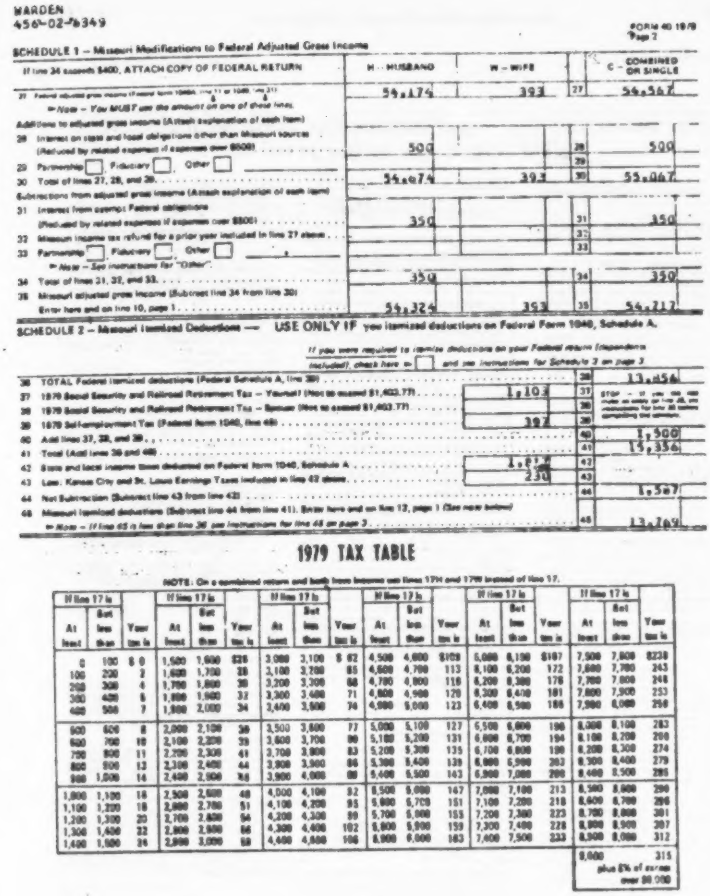
George A. Warden 2-11-80

Priscilla S. Warden

J.P. Audit (J. P. Audit) 2-11-80

1212 Lomax, Kansas City, MO 64113

331-24-1045E



WARDEN
456-02-6349

FORM 40 1979
Page 2

SCHEDULE 1 – Missouri Modifications to Federal Adjusted Gross Income

If line 34 exceeds $400, ATTACH COPY OF FEDERAL RETURN	H – HUSBAND	W – WIFE		C – COMBINED OR SINGLE
27 Federal adjusted gross income (Federal form 1040A, line 11 or 1040, line 31) ► Note – You MUST use the amount on one of these lines.	54,174	393	27	54,567
Additions to adjusted gross income (Attach explanation of each item)				
28 Interest on state and local obligations other than Missouri sources (Reduced by related expenses if expenses over $500)	500		28	500
29 Partnership ☐, Fiduciary ☐, Other ☐ ______			29	
30 Total of lines 27, 28, and 29	54,674	393	30	55,067
Subtractions from adjusted gross income (Attach explanation of each item)				
31 Interest from exempt Federal obligations (Reduced by related expenses if expenses over $500)	350		31	350
32 Missouri income tax refund for a prior year included in line 27 above			32	
33 Partnership ☐, Fiduciary ☐, Other ☐ ______ ► Note – See instructions for "Other".			33	
34 Total of lines 31, 32, and 33	350		34	350
35 Missouri adjusted gross income (Subtract line 34 from line 30) Enter here and on line 10, page 1	54,324	393	35	54,717

SCHEDULE 2 – Missouri Itemized Deductions — USE ONLY IF you itemized deductions on Federal Form 1040, Schedule A.

If you were required to itemize deductions on your Federal return (dependents included), check here ► ☐ *and see instructions for Schedule 2 on page 3*

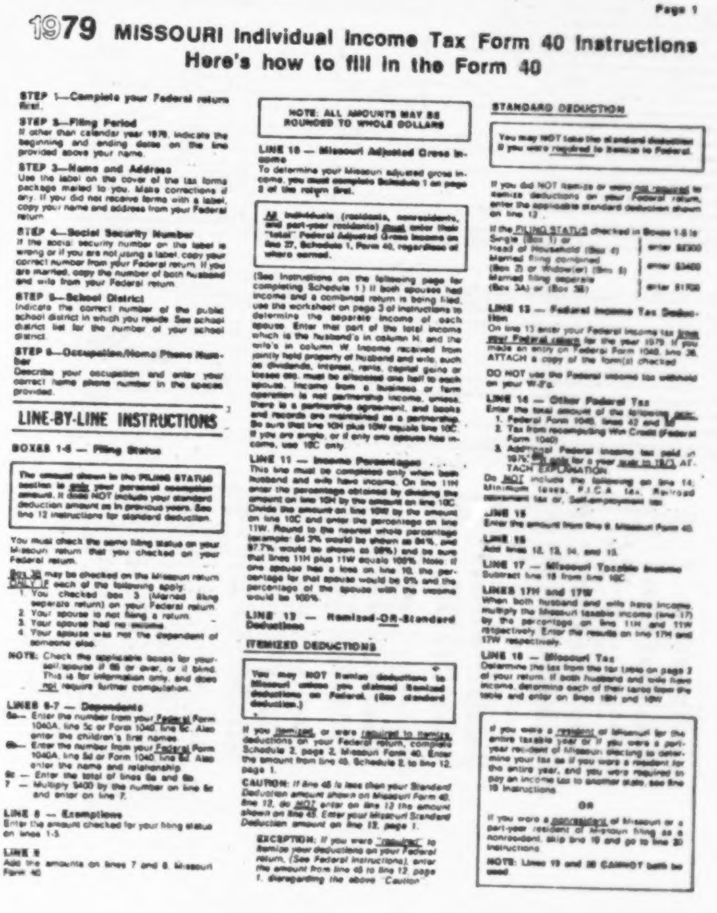
36 TOTAL Federal itemized deductions (Federal Schedule A, line 39)		36	13,456
37 1979 Social Security and Railroad Retirement Tax – Yourself (Not to exceed $1,403.77)	1,103	37	STOP – If you did not make an entry on line 36, see instructions for line 36 before completing this schedule.
38 1979 Social Security and Railroad Retirement Tax – Spouse (Not to exceed $1,403.77)		38	
39 1979 Self-employment Tax (Federal form 1040, line 48)	397	39	
40 Add lines 37, 38, and 39		40	1,500
41 Total (Add lines 36 and 40)		41	15,356
42 State and local income taxes deducted on Federal form 1040, Schedule A	1,817	42	
43 Less: Kansas City and St. Louis Earnings Taxes included in line 42 above	230	43	
44 Net Subtraction (Subtract line 43 from line 42)		44	1,587
45 Missouri itemized deductions (Subtract line 44 from line 41). Enter here and on line 12, page 1 (See note below) ► Note – If line 45 is less than line 36 see instructions for line 45 on page 3		45	13,769

1979 TAX TABLE

NOTE: On a combined return and both have income use lines 17H and 17W instead of line 17.

If line 17 is			If line 17 is			If line 17 is			If line 17 is			If line 17 is			If line 17 is		
At least	But less than	Your tax is	At least	But less than	Your tax is	At least	But less than	Your tax is	At least	But less than	Your tax is	At least	But less than	Your tax is	At least	But less than	Your tax is
0	100	$ 0	1,500	1,600	$26	3,000	3,100	$ 62	4,500	4,600	$109	6,000	6,100	$167	7,500	7,600	$238
100	200	2	1,600	1,700	28	3,100	3,200	65	4,600	4,700	113	6,100	6,200	172	7,600	7,700	243
200	300	4	1,700	1,800	30	3,200	3,300	68	4,700	4,800	116	6,200	6,300	176	7,700	7,800	248
300	400	5	1,800	1,900	32	3,300	3,400	71	4,800	4,900	120	6,300	6,400	181	7,800	7,900	253
400	500	7	1,900	2,000	34	3,400	3,500	74	4,900	5,000	123	6,400	6,500	185	7,900	8,000	258
500	600	8	2,000	2,100	36	3,500	3,600	77	5,000	5,100	127	6,500	6,600	190	8,000	8,100	263
600	700	10	2,100	2,200	39	3,600	3,700	80	5,100	5,200	131	6,600	6,700	194	8,100	8,200	268
700	800	11	2,200	2,300	41	3,700	3,800	83	5,200	5,300	135	6,700	6,800	199	8,200	8,300	274
800	900	13	2,300	2,400	44	3,800	3,900	86	5,300	5,400	139	6,800	6,900	203	8,300	8,400	279
900	1,000	14	2,400	2,500	46	3,900	4,000	89	5,400	5,500	143	6,900	7,000	208	8,400	8,500	285
1,000	1,100	16	2,500	2,600	48	4,000	4,100	92	5,500	5,600	147	7,000	7,100	213	8,500	8,600	290
1,100	1,200	18	2,600	2,700	51	4,100	4,200	95	5,600	5,700	151	7,100	7,200	218	8,600	8,700	296
1,200	1,300	20	2,700	2,800	54	4,200	4,300	99	5,700	5,800	155	7,200	7,300	223	8,700	8,800	301
1,300	1,400	22	2,800	2,900	56	4,300	4,400	102	5,800	5,900	159	7,300	7,400	228	8,800	8,900	307
1,400	1,500	24	2,900	3,000	59	4,400	4,500	106	5,900	6,000	163	7,400	7,500	233	8,900	9,000	312
															9,000		315 plus 6% of excess over $9,000

[¶ 13-490]—Continued



Page 1

1979 MISSOURI Individual Income Tax Form 40 Instructions
Here's how to fill in the Form 40

STEP 1—Complete your Federal return first.

STEP 2—Filing Period
If other than calendar year 1979, indicate the beginning and ending dates on the line provided above your name.

STEP 3—Name and Address
Use the label on the cover of the tax forms package mailed to you. Make corrections if any. If you did not receive forms with a label, copy your name and address from your Federal return.

STEP 4—Social Security Number
If the social security number on the label is wrong or if you are not using a label, copy your correct number from your Federal return. If you are married, copy the number of both husband and wife from your Federal return.

STEP 5—School District
Indicate the correct number of the public school district in which you reside. See school district list for the number of your school district.

STEP 6—Occupation/Home Phone Number
Describe your occupation and enter your correct home phone number in the spaces provided.

LINE-BY-LINE INSTRUCTIONS

BOXES 1-5 — Filing Status

> The amount shown in the FILING STATUS section is only your personal exemption amount. It does NOT include your standard deduction amount as in previous years. See line 12 instructions for standard deduction.

You must check the same filing status on your Missouri return that you checked on your Federal return.

Box 3B may be checked on the Missouri return ONLY IF each of the following apply:
1. You checked box 3 (Married filing separate return) on your Federal return.
2. Your spouse is not filing a return.
3. Your spouse had no income.
4. Your spouse was not the dependent of someone else.

NOTE: Check the applicable boxes for yourself/spouse if 65 or over, or if blind. This is for information only, and does not require further computation.

LINES 6-7 — Dependents
6a— Enter the number from your Federal Form 1040A, line 5c or Form 1040, line 6c. Also enter the children's first names.
6b— Enter the number from your Federal Form 1040A, line 5d or Form 1040, line 6d. Also enter the name and relationship.
6c — Enter the total of lines 6a and 6b.
7 — Multiply $400 by the number on line 6c and enter on line 7.

LINE 8 — Exemptions
Enter the amount checked for your filing status on lines 1-5.

LINE 9
Add the amounts on lines 7 and 8, Missouri Form 40.

> NOTE: ALL AMOUNTS MAY BE ROUNDED TO WHOLE DOLLARS

LINE 10 — Missouri Adjusted Gross Income
To determine your Missouri adjusted gross income, you must complete Schedule 1 on page 3 of the return first.

> All individuals (residents, nonresidents, and part-year residents) must enter their "total" Federal Adjusted Gross Income on line 27, Schedule 1, Form 40, regardless of where earned.

(See instructions on the following page for completing Schedule 1.) If both spouses had income and a combined return is being filed, use the worksheet on page 3 of instructions to determine the separate income of each spouse. Enter that part of the total income which is the husband's in column H, and the wife's in column W. Income received from jointly held property of husband and wife, such as dividends, interest, rents, capital gains or losses etc. must be allocated one half to each spouse. Income from a business or farm operation is not partnership income, unless there is a partnership agreement, and books and records are maintained as a partnership. Be sure that line 10H plus 10W equals line 10C. If you are single, or if only one spouse has income, use 10C only.

LINE 11 — Income Percentages
This line must be completed only when both husband and wife have income. On line 11H enter the percentage obtained by dividing the amount on line 10H by the amount on line 10C. Divide the amount on line 10W by the amount on line 10C and enter the percentage on line 11W. Round to the nearest whole percentage (example: 84.3% would be shown as 84%, and 87.7% would be shown as 88%) and be sure that lines 11H plus 11W equals 100%. Note: if one spouse has a loss on line 10, the percentage for that spouse would be 0% and the percentage of the spouse with the income would be 100%.

LINE 12 — Itemized-OR-Standard Deductions

ITEMIZED DEDUCTIONS

> You may NOT itemize deductions to Missouri unless you claimed itemized deductions on Federal. (See standard deduction.)

If you itemized, or were required to itemize, deductions on your Federal return, complete Schedule 2, page 2, Missouri Form 40. Enter the amount from line 45, Schedule 2, to line 12, page 1.

CAUTION: *If line 45 is less than your Standard Deduction amount shown on Missouri Form 40, line 12, do NOT enter on line 12 the amount shown on line 45. Enter your Missouri Standard Deduction amount on line 12, page 1.*

EXCEPTION: *If you were "required" to itemize your deductions on your Federal return, (See Federal instructions), enter the amount from line 45 to line 12, page 1, disregarding the above "Caution".*

STANDARD DEDUCTION

> You may NOT take the standard deduction if you were required to itemize to Federal.

If you did NOT itemize or were not required to itemize deductions on your Federal return, enter the applicable standard deduction shown on line 12.

If the FILING STATUS checked in Boxes 1-5 is

Single (Box 1) or Head of Household (Box 4)	enter $2300
Married filing combined (Box 2) or Widow(er) (Box 5)	enter $3400
Married filing separate (Box 3A) or (Box 3B)	enter $1700

LINE 13 — Federal Income Tax Deduction
On line 13 enter your Federal income tax from your Federal return for the year 1979. If you made an entry on Federal Form 1040, line 38, ATTACH a copy of the form(s) checked.

DO NOT use the Federal income tax withheld on your W-2's.

LINE 14 — Other Federal Tax
Enter the total amount of the following items:
1. Federal Form 1040, lines 42 and [illegible]
2. Tax from recomputing Win Credit (Federal Form 1040)
3. Additional Federal income tax paid in 1979, if paid for a year prior to 1979. ATTACH EXPLANATION.

Do NOT include the following on line 14: Minimum taxes, F.I.C.A. tax, Railroad retirement tax or, Self-employment tax.

LINE 15
Enter the amount from line 9, Missouri Form 40.

LINE 16
Add lines 12, 13, 14, and 15.

LINE 17 — Missouri Taxable Income
Subtract line 16 from line 10C.

LINES 17H and 17W
When both husband and wife have income, multiply the Missouri taxable income (line 17) by the percentage on line 11H and 11W respectively. Enter the results on line 17H and 17W respectively.

LINE 18 — Missouri Tax
Determine the tax from the tax table on page 2 of your return. If both husband and wife have income, determine each of their taxes from the table and enter on lines 18H and 18W.

> If you were a resident of Missouri for the entire taxable year or if you were a part-year resident of Missouri electing to determine your tax as if you were a resident for the entire year, and you were required to pay an income tax to another state, see line 19 instructions.
>
> OR
>
> If you were a nonresident of Missouri or a part-year resident of Missouri filing as a nonresident, skip line 19 and go to line 20 instructions.
>
> **NOTE:** Lines 19 and 20 CANNOT both be used.

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[¶ 13-490]—Continued

Page 3

Amounts received from pension plans authorized by Chapter 169 R.S.Mo., by Missouri public school retirees (or their survivors) are a negative modification to the extent they are included in line 27, State sources.

(2) Additional Capital Gain Deduction Due to Difference in Basis—If, during the taxable year, you received a gain from the sale of property or other capital assets for which you had a higher tax basis for Missouri tax purposes than for Federal tax purposes you may exclude the gain or the difference in the basis of the property so disposed, whichever is smaller. If the gain was considered a long term capital gain for Federal income tax purposes, the exclusion is limited to the gain or 50% of such difference whichever is smaller. No difference in basis can be claimed for any property obtained after December 31, 1972. If your basis for Missouri purposes is less than the basis for Federal income tax purposes, no adjustment is required.

(3) Accumulation Distribution—If during the year 1979 you received a distribution as a beneficiary of a trust that was made from accumulated earnings of prior years and filed Federal Form 4970, such amount may be excluded from your Missouri income to the extent that such amount was reported in your total Federal adjusted gross income.

(4) Amounts Previously Taxed by Missouri—The amount of any income (including annuity income) or gain included in your Federal adjusted gross income which was properly reported as income or gain in a prior Missouri income tax return filed under the Missouri Laws in effect prior to January 1, 1973 by you or by a decedent, an estate or a trust from whom you acquired such income or gain may be excluded.

LINE 35
Subtract line 34 from line 30. Enter the result on line 10, page 1.

LINE 29 or 33: SPECIAL NOTE
Partnership Adjustment—If during the taxable year you received income from a partnership, enter the amount of your partnership adjustment, if any. The partnership must notify you of the amount of any such adjustment to which you are entitled.

Fiduciary Adjustment—If during the taxable year you received income from a trust or estate, enter the amount of your fiduciary adjustment, if any. The executor or trustee of the Missouri estate or trust of which you are a beneficiary must notify you of the amount of any such adjustment to which you are entitled.

Instructions For Schedule 2—Form 40

SCHEDULE 2—Missouri Itemized Deductions

LINE 36 — TOTAL Federal Itemized Deductions
If line 39 is greater than line 40 on Federal Schedule A, enter the amount from Federal Schedule A, line 39 on Missouri Form 40, line 36.

If Federal Schedule A, line 39 is blank or is less than line 40, you should not complete Schedule 2. You can itemize deductions to Missouri only if you itemized to Federal. Enter on line 12 the applicable Missouri standard deduction amount, but see the following exception.

EXCEPTION: If you were "required" to itemize deductions on your Federal return, disregard the above instruction. You MUST enter the amount from Federal Schedule TC, Part II, line 3 to line 36 and then complete Schedule 2.

LINES 37-39 — Social Security and Self-employment Taxes
Enter on line 37 the total of your social security and/or railroad retirement tax. Enter on line 38 the total of your spouse's social security and/or railroad retirement tax, if a combined return. Enter on line 39 your total self-employment tax.

LINE 42 and 43 — State and Local Income Taxes
Enter on line 42 the amount from Federal Schedule A. This amount includes any state income tax and also any local income tax, such as a city earnings tax paid in 1979.

Enter on line 43 the amount of any Kansas City and St. Louis Earning Tax which is included on line 42.

LINE 46 — Missouri Itemized Deductions
CAUTION: If the amount on line 46 is less than your Standard Deduction amount shown on Missouri Form 40, line 12, do NOT enter on line 12 the amount shown on line 46. Enter your Missouri standard deduction amount on line 12, page 1, but see the following exception.

EXCEPTION: If you were "required" to itemize your deductions on your Federal return (See Federal instructions), enter the amount from line 46 to line 12, page 1, disregarding the above "Caution".

WORKSHEET FOR COMBINED RETURN

This worksheet will assist you in determining the income of each spouse when both have income to be entered on Form 40. Enter the amount(s) on line 18 below to Form 40, page 2, Schedule 1, line 27.

ADJUSTED GROSS INCOME COMPUTATION	FEDERAL FORM 1040 LINE NUMBER	H-HUSBAND		W-WIFE
1. Wages, salaries, tips, etc.	7		1	
2. Interest income	8		2	
3. Dividends after exclusion	9c		3	
4. State and local income tax refunds	10		4	
5. Alimony received	11		5	
6. Business income (loss)	12		6	
7. Net gain (loss) capital assets	13		7	
8. 40% of capital gain distributions (not reported on Schedule D)	14		8	
9. Net gain (loss) supplemental schedule	15		9	
10. Fully taxable pensions and annuities	16		10	
11. Pensions and annuities	17		11	
12. Rents and royalties	18		12	
13. Net gain (loss)-partnerships, estates/trusts, small business corporations	18		13	
14. Farm income (loss)	19		14	
15. Unemployment compensation and Other	20b & 21		15	
16. Total (add lines 1 through 15)			16	
17. Less: Federal adjustments to income	30		17	
18. FEDERAL ADJUSTED GROSS INCOME (line 16 less line 17)	31		18	
19. COMBINED FEDERAL ADJUSTED GROSS INCOME (add line 18, columns H and W)	31		19	

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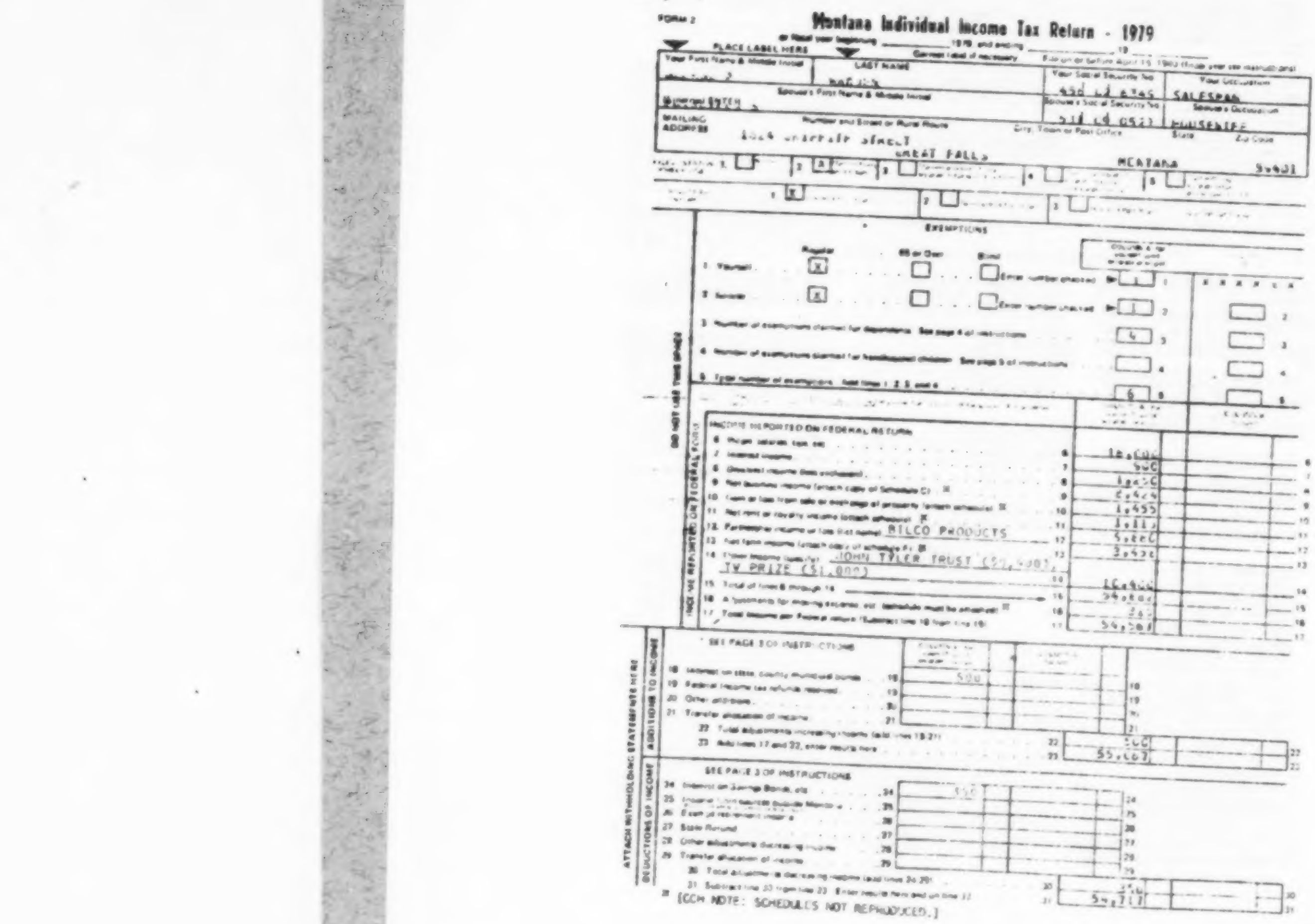
[¶ 10-311]

[The original of Form 2 is 8½" × 11"—3 pages.]



FORM 2

Montana Individual Income Tax Return - 1979

PLACE LABEL HERE

LAST NAME

Your Social Security No.

Your Occupation: SALESMAN

Spouse's First Name & Middle Initial

Spouse's Social Security No.

Spouse's Occupation: HOUSEWIFE

MAILING ADDRESS: Number and Street or Rural Route; City, Town or Post Office; State; Zip Code

GREAT FALLS MONTANA

EXEMPTIONS

Regular / 65 or Over / Blind

1 Yourself ☒ ☐ ☐

2 Spouse ☒ ☐ ☐

3 Number of exemptions claimed for dependents. See page 4 of instructions: 4

4 Number of exemptions claimed for handicapped children. See page 5 of instructions

5 Total number of exemptions. Add lines 1, 2, 3 and 4: 6

INCOME REPORTED ON FEDERAL RETURN

12 Partnership income or loss (list name): BILCO PRODUCTS

14 Other income (specify): JOHN TYLER TRUST, TV PRIZE ($1,000)

SEE PAGE 3 OF INSTRUCTIONS

18 Interest on state, county, municipal bonds: 500

SEE PAGE 3 OF INSTRUCTIONS

DO NOT USE THIS SPACE

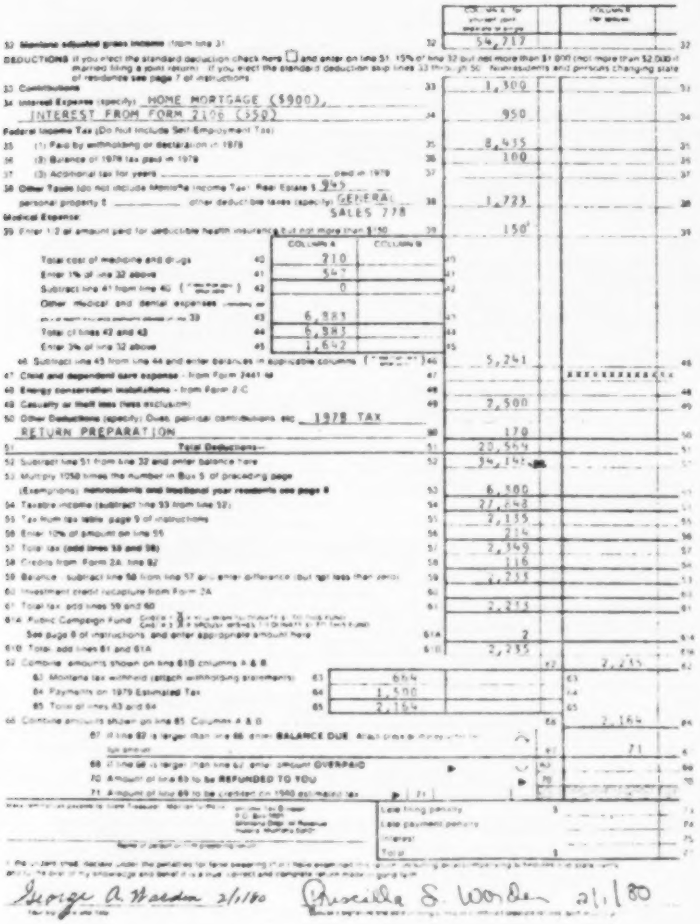
ATTACH WITHHOLDING STATEMENTS HERE

ADDITIONS TO INCOME

DEDUCTIONS OF INCOME

[CCH NOTE: SCHEDULES NOT REPRODUCED.]

[¶18-311]—Continued



Line		Column A	Column B
32	Montana adjusted gross income (from line 31)	54,717	
	DEDUCTIONS If you elect the standard deduction check here ☐ and enter on line 51 15% of line 32 but not more than $1,000 (not more than $2,000 if married filing a joint return). If you elect the standard deduction skip lines 33 through 50. Nonresidents and persons changing state of residence see page 7 of instructions		
33	Contributions	1,300	
34	Interest Expense (specify) HOME MORTGAGE ($900), INTEREST FROM FORM 2106 ($50)	950	
	Federal Income Tax (Do not include Self-Employment Tax)		
35	(1) Paid by withholding or declaration in 1979	8,435	
36	(2) Balance of 1978 tax paid in 1979	100	
37	(3) Additional tax for years ________ paid in 1979		
38	Other Taxes (do not include Montana income Tax) Real Estate $ 945 personal property $ ______ other deductible taxes (specify) GENERAL SALES 778	1,723	
	Medical Expense		
39	Enter 1/2 of amount paid for deductible health insurance but not more than $150	150	
40	Total cost of medicine and drugs	210	
41	Enter 1% of line 32 above	547	
42	Subtract line 41 from line 40	0	
43	Other medical and dental expenses … line 39	6,883	
44	Total of lines 42 and 43	6,883	
45	Enter 3% of line 32 above	1,642	
46	Subtract line 45 from line 44 and enter balances in applicable columns	5,241	
47	Child and dependent care expense - from Form 2441 M		
48	Energy conservation installations - from Form 2-C		
49	Casualty or theft loss (less exclusion)	2,500	
50	Other Deductions (specify) Dues, political contributions, etc. 1978 TAX RETURN PREPARATION	170	
51	Total Deductions—	20,569	
52	Subtract line 51 from line 32 and enter balance here	34,14[illegible]	
53	Multiply 1050 times the number in Box 5 of preceding page (Exemptions) nonresidents and fractional year residents see page 8	6,300	
54	Taxable income (subtract line 53 from line 52)	27,848	
55	Tax from tax table page 9 of instructions	2,135	
56	Enter 10% of amount on line 55	214	
57	Total tax (add lines 55 and 56)	2,349	
58	Credits from Form 2A, line 82	116	
59	Balance - subtract line 58 from line 57 and enter difference (but not less than zero)	2,233	
60	Investment credit recapture from Form 2A		
61	Total tax, add lines 59 and 60	2,233	
61A	Public Campaign Fund. See page 8 of instructions and enter appropriate amount here	2	
61B	Total, add lines 61 and 61A	2,235	
62	Combine amounts shown on line 61B columns A & B		2,235
63	Montana tax withheld (attach withholding statements)	664	
64	Payments on 1979 Estimated Tax	1,500	
65	Total of lines 63 and 64	2,164	
66	Combine amounts shown on line 65, Columns A & B		2,164
67	If line 62 is larger than line 66, enter BALANCE DUE		71
69	If line 66 is larger than line 62, enter amount OVERPAID		
70	Amount of line 69 to be REFUNDED TO YOU		
71	Amount of line 69 to be credited on 1980 estimated tax		

72	Late filing penalty	$
73	Late payment penalty	
74	Interest	
75	Total	$

Montana Dept. of Revenue
Helena, Montana

George A. Warden 2/1/80 Priscilla S. Worden 2/1/80

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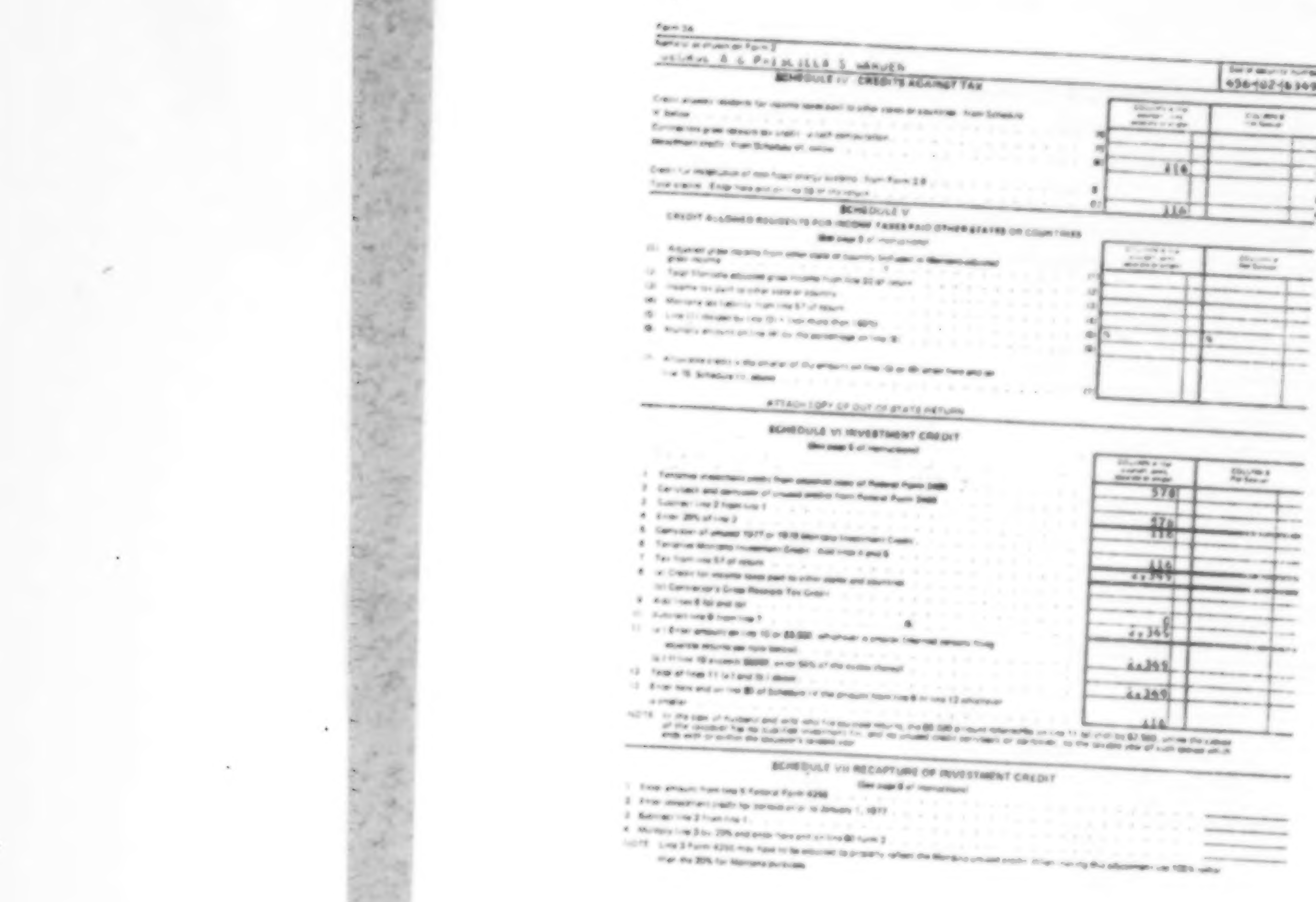
D.



Form 2A

SCHEDULE IV CREDITS AGAINST TAX

416

416

SCHEDULE V

CREDIT ALLOWED RESIDENTS FOR INCOME TAXES PAID OTHER STATES OR COUNTRIES

ATTACH COPY OF OUT OF STATE RETURN

SCHEDULE VI INVESTMENT CREDIT

578

416

SCHEDULE VII RECAPTURE OF INVESTMENT CREDIT

[¶ 18-312]—Continued

AMENDED RETURNS:

In order to correct an error in a return which has been filed, a taxpayer must file an amended return. Montana form 2X, which may be obtained from the Department of Revenue, must be used for this purpose.

JOINT OR SEPARATE RETURNS

JOINT RETURNS:

A husband and wife living together may file a joint return even though one of them has no income or deductions. A joint return must include all income and deductions of both husband and wife. In the return heading, list both names. Both must sign the return. If husband and wife each have taxable income, it is generally to their advantage to file separate Montana individual income tax returns.

SEPARATE RETURNS:

A separate return must account only for the income and deductions of the person filing the return.

When deductions are itemized, each spouse must claim his or her own deductions. If husband and wife file separate returns and one itemizes actual deductions, then both must do so.

The return form is designed to permit husbands and wives who desire to file separately to do so using only one return form. This form is also to be used by single persons and by married persons electing to file a joint return.

When husband and wife file separately on this form, the resulting tax liability will be the same as if each had filed using a separate income tax form. The advantage of this form is that the tax liabilities of husband and wife are combined to determine the net refund or net balance of tax due. If one spouse has an overpayment and the other spouse owes a balance of tax, the two amounts are offset to determine the net refund or the net tax due. In the event of a net refund one state refund check will be issued in the name of both the husband and wife. In the event of a net tax due, one check may be written, payable to the State Treasurer, to cover the combined tax liability. THOSE HUSBANDS AND WIVES WHO DESIRE TO KEEP THEIR TAX LIABILITIES SEPARATE IN ORDER THAT EACH MAY RECEIVE HIS OR HER OWN REFUND (OR PAY HIS OR HER OWN BALANCE OF TAX DUE) MUST FILE SEPARATE RETURNS ON SEPARATE INCOME TAX FORMS.

Please be sure to complete all applicable spaces in the heading. Since the form is designed to allow married couples to file separately using a single return form, it is necessary to use the columns headed "A" and "B" in the following manner:

MARRIED PERSONS FILING SEPARATE RETURNS ON ONE FORM:

Use column A for yourself and column B for spouse.

ALL OTHERS:

Use column A only.

Failure to use the form in this way delays processing of the return.

Each individual return must be signed. Both taxpayer and spouse must sign a joint return. Unsigned returns will be returned for signature, and penalties for delinquency may be incurred.

WHEN AND HOW TO PAY TAX—WHERE TO FILE

Returns for the calendar year 1979 must be filed on or before April 15, 1980. Returns for a fiscal year must be filed with the Department of Revenue on or before the 15th day of the 4th month following the close of the fiscal year.

The balance of tax shown due on line 67 must be paid in full at the time of filing the return (unless the amount is less than $1.00, in which case payment is not required). Checks and money orders should be made payable to the State Treasurer. Do not send cash. In order to assure proper credit for your payment, attach your remittance to your return.

Extensions of Time for Filing. Taxpayers may obtain an automatic two-month extension of time for filing a return by submitting an application on or before the due date of the return. Applications may be made on forms obtained from the Department of Revenue, or in a letter specifically requesting an automatic two-month extension. Application for extension must be prepared in duplicate; the original must be filed with the Department on or before the due date of the return, while the copy must be attached to the return when it is filed. The Department of Revenue may grant an additional extension of time for filing provided that the taxpayer files an application, in triplicate, establishing that good cause exists. No extension may be granted for more than six months from the original due date of the return except in the case of members of the Armed Forces and persons living or traveling outside the United States or Puerto Rico.

PENALTIES FOR LATE FILING OR LATE PAYMENT

If there is no intent to evade the tax, the penalty for failure to file a return by its due date is $5 or five percent of unpaid tax, whichever is the larger. If there is no intent to evade the tax, the penalty for failure to pay tax by the date it is due is ten percent of the unpaid tax or $5, whichever is the larger. In addition, interest, at the rate of nine percent per year, is charged on the balance of tax which remains unpaid.

REPORTING INCOME

LINES 6 THROUGH 14. Enter on lines 6 through 14 all items of income as reported on your Federal Income Tax Return. Enter on line 15 the Adjustments to Income claimed on your Federal Return. These consist of such items as moving expenses, employee business expense and payments by self employed persons to retirement plans, and periodic alimony payments. An entry on line 15 must be supported by a schedule or schedules which fully explain the adjustment claimed.

BE SURE TO ATTACH A COPY OF EACH EARNINGS STATEMENT TO YOUR RETURN IN ORDER THAT CREDIT MAY BE GIVEN FOR MONTANA INCOME TAX WITHHELD.

FULL-YEAR RESIDENTS ONLY

(NONRESIDENTS and PART YEAR RESIDENTS see the shaded section beginning on page 7.)

MODIFICATIONS - LINES 22 AND 30

The income reported on your Federal return may not include certain items which are taxable for Montana Income Tax purposes but may include certain items which are exempt from Montana Income Tax. Consequently, it may be necessary to adjust the total income reported on line 17 to determine the correct amount to be reported on line 32 as Montana adjusted gross income. Lines 18 to 30 of the return are provided for making the necessary adjustments. Entries should be made on lines 18-30 according to the following instructions.

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I. ADJUSTMENTS INCREASING INCOME

(a) Interest Income from Bonds and Other Obligations of a State or its Political Subdivisions. Interest income, except interest on obligations of the State of Montana or its political subdivisions, is taxable. Enter on line 18 the amount of interest income on obligations issued by a state (or a political subdivision thereof) other than the state of Montana or its political subdivisions.

(b) Federal Income Tax Refunds. When a taxpayer claims a deduction for Federal income tax paid and, by doing so, reduces his Montana taxable income, the amount of any subsequent refund of the Federal tax claimed as a deduction is taxable in the year in which the refund is received. The amount of such a refund must be entered on line 19.

(c) Other Items Increasing Montana Income. A shareholder in a Federal Subchapter S corporation which does not elect comparable treatment under Montana Corporation License Tax law must enter on line 20:

1) the amount of dividends received from the corporation, and
2) the amount of any net operating loss passed through by the corporation and deducted in determining the total income reported on line 15.

II. ADJUSTMENTS DECREASING INCOME

(a) Interest Income from Bonds and Other Obligations of the United States. Income from the obligations of the United States Government is exempt from Montana Income Tax. (See list on page 8 of instructions.) If the income reported on line 15 of the return includes such interest income, enter the amount on line 24.

(b) Exempt Retirement Income. The Montana Income Tax Law exempts part or all benefits paid under certain retirement acts.

(1) The first $3,600 of benefits received under a Federal employee retirement act (including retirement acts covering members of the Armed Forces) is exempt. Enter on line 26 the amount of benefits included in the income reported on line 15 but not more than $3,600.

(2) The total amount of benefits received under the following Montana retirement acts is exempt:

The Montana Teachers Retirement Act
The Montana Public Employees Retirement Act
The Montana Highway Patrol Retirement Act
A firemen's pension fund established pursuant to the provisions of sections 7-21-4203 and 7-13-4105, 7-32-4302, MCA
A policemen's retirement system established pursuant to the Metropolitan Police Law (Title 19, Chapter 11, Montana Codes Annotated)

Enter on line 26 the total amount of benefits included in the income reported on line 15 and name the retirement fund in the space provided.

(c) INDIAN RESERVATION INCOME. An Indian who lives on an Indian reservation may exclude from Montana adjusted gross income any income which was earned on an Indian reservation, since such income is not subject to Montana income tax. If the income reported on line 15 includes income of this nature, the amount should be entered on line 25 and a note as to its nature should be placed in the space to the left.

The extent of Indian liability for state income tax could be changed at any time since many aspects of the law as it applies to Indians are currently in litigation.

(d) Other Items Not Subject to Tax. If the income reported on line 15 includes a refund of Montana Income Tax, enter the amount on line 27.

If the income reported on line 15 includes the distributive share of net profit and capital gain passed through to a shareholder in a Subchapter S Corporation but the corporation has not made the comparable election under Montana Corporation License Tax Law, enter the amount on line 28.

SPECIAL INFORMATION - LINES 21 AND 29

ASSIGNMENT OF INCOME TO PROPRIETOR'S SPOUSE

The net income (or loss) from a business conducted as a sole proprietorship must be reported in full by the proprietor. However, if the proprietor's spouse regularly and systematically performs substantial personal services in operating the business, for which he or she is not paid a salary or wages, the proprietor and his (her) spouse may, at their option, agree to assign to the spouse an amount equal to reasonable compensation for the services rendered. The amount agreed upon is deemed taxable income of the spouse for services rendered. The amount reduces the proprietorship income of the proprietor spouse. The allocation must be made on the basis of the specific facts in each particular case and without regard to the net income of business. Compensation must be determined on the basis of the reasonable rate of pay appropriate for the taxpayer's locality for the particular type of personal services rendered. Services rendered in the operation of a household or services which are incidental to the operation of the business may not be used as a basis for this allocation.

In the event the proprietor's spouse is the owner of an interest in real or personal property which is used free of charge by the proprietor in a business, an amount equal to the fair rental value of property may, by mutual agreement, be assigned to the spouse. Thus, if the spouse has a one-half interest in the property, an amount equal to one-half of the fair rental value of the property used in the business may be assigned. In the case of real property used for agricultural purposes, the assignment of fair rental may be made on the "crop rental" basis. The fair rental value must be determined on the basis of the fair rental value in the taxpayer's locality for the particular type and use of the property involved. Idle property and property not used in the production of business income may not be assigned a rental value, and the net income of the business is not a factor in determining fair rental value.

Please attach an explanation sheet to the return showing how the allocation of income was determined. The allocation of income must appear on line 29 as a deduction from proprietor's income and on line 21 as an addition to spouse's income. If more detail information is necessary, please call the Audit Bureau within The Income Tax Division.

DEDUCTIONS - LINE 51

(Nonresidents and Part-year Residents see the shaded section beginning on page 7.)

Montana residents may choose to claim a standard deduction or may itemize deductions.

STANDARD DEDUCTION

Single or Married Filing Separately. Calculate 15% of the amount found on line 32 (Montana adjusted gross income). If the amount calculated is less than $1000, enter it on line 51; if it is greater than or equal to $1000, enter $1000 on line 51.

Married Filing Jointly. Calculate 15% of the amount found on line 32 (Montana adjusted gross income). If the amount calculated is less than $2000, enter it on line 51; if it is greater than or equal to $2000, enter $2000 on line 51.

NOTE: IF HUSBAND AND WIFE FILE SEPARATE RETURNS, BOTH MUST ITEMIZE DEDUCTIONS OR BOTH MUST CLAIM THE STANDARD DEDUCTION.

APPENDIX TO STATEMENT OF THE HONORABLE MILLICENT FENWICK

Before the House Committee on Ways and Means

April 2, 1980

Mr. Chairman, I do not feel that the central question in the debate over elimination of the so-called "marriage tax" should be the allocation of deductions and exemptions. The central issue is the higher marginal rate of taxation faced by the second earner because of the aggregation of spouses' incomes. From the beginning of this debate, my chief aim has been to provide relief for bonafide two paycheck couples in low and middle income brackets, since statistics indicate that the vast majority of those paying the "marriage tax" are in these brackets. According to the Joint Committee on Taxation, about 79% of the couples who would benefit from eliminating the "marriage tax" have combined incomes under $30,000. I think it is safe to say that the vast majority of these couples would not even itemize their deductions. It should also be noted that, according to the Joint Committee, 97% of the couples estimated to be paying the "marriage tax" in 1979 made less than $50,000 when both incomes were combined.

Nevertheless, a great deal of concern has been raised about the allocation of both itemized deductions and non-wage income under a system of optional individual taxation. Some of these problems are discussed in a section of the report provided to Committee members by the Joint Committee entitled "Technical issues related to joint filing."

Many of the concerns raised in that section were addressed in my letter to you of November 13. 1979. Copies of that letter were sent to the distinguished Ranking Member, to the Joint Tax Committee staff, to the Office of Tax Analysis at the Department of the Treasury, and to several other interested parties.

It is unfortunate that the Joint Committee was unable to release their abridged report until the day of the hearings. The fact that the report was released today leaves little time for adequate consideration or broad discussion of the section concerning "technical issues" by witnesses who will appear before the Committee today and tomorrow. In some cases, it focuses on a few issues that either have already been solved or can be solved without much difficulty.

Basically, I proposed last year to allocate non-wage income and itemized deductions as follows:

"Unearned" or "non-wage" income (i.e. dividends from stock, rent from property) would be taxed individually according to ownership. The spouse whose name appears on the deed or certificate of ownership, or the owner of the asset or income, would be taxed on any income arising from it. In cases were such title is jointly owned, it will be divided equally (50-50) for tax purposes, unless some proof is furnished that the joint ownership exists in some form other than 50-50.

Each spouse would be entitled to one personal exemption for himself or herself. Personal exemptions (such as those for dependents) would be divided equally (50-50), which could be easily done, since I proposed in the letter that there be two columns on one form to allow separate filing on the "combined-separate" form that many States already employ.

Itemized deductions that result from expenditures on State income taxes, or direct costs for medical care would be treated individually.

The zero bracket amount and the floor on itemized deductions would be the same for single or married individuals - $2,300.

Under this system, the potential for shifting deductions and exemptions to the spouse with the larger income is checked by the necessity of shifting the ownership of the source of income that has generated the deduction, thereby increasing the taxable income of the higher earner. Most deductions and all exemptions not specifically related to ownership are claimed jointly. These rules would probably be sufficient to prevent the possibility of a couple's shifting all itemized deductions to the spouse with the higher income while the spouse with the lower income still benefits from the $2,300 zero bracket amount. If this is not felt to be the case, however, a total floor of $4,600 could be adopted for all married couples; or, alternatively, the rule requiring both spouses to itemize if one does, which currently applies to married couples who file separately, could be maintained.

As I stated in my November letter, I am not necessarily wedded to this or any other approach. My aim is merely to show that many allocation questions can be easily answered; and that, in fact, rules regarding the allocation of many of these deductions are already necessarily in place for those who employ the "married filing separately" filing status. These rules may need adjustment, but the point is that these allocation problems are not new. They exist under the current system. In addition, there are several States in which the separate filing option exists for State income tax, and these States have adequately addressed the aforementioned allocation problems. These so-called "technical" issues do not present problems substantial enough to justify the continuation of our present practice of penalizing married two-earner couples and discouraging married women from entering the workforce.

I would, however, like to respond to some of the concerns raised in the sections of the Joint Committee Report entitled "Technical issues related to separate filing " and "Analysis of Specific Proposals."

Income Issues:

I do not see the allocation of personal service or earned income as a major problem if H.R. 3609 were to be enacted. Section 5,b, of the bill states that, "For purposes of this chapter, in the case of any individual for whom the election under subsection (a) is in effect for the taxable year, the taxable income of such individual for such year shall be computed without regard to community property laws." In other words, I have proposed to allocate earned income for tax purposes to whichever spouse performed the services that produced the income -- even in community property States. Obviously, this is necessary to prevent any recurrence of the pre-1948 disparity in the tax treatment of those living in community property States and those living in common law States.

The only potential technical problem in this area relates to non-cooperating spouses. A situation could conceivably arise in which one spouse would be liable for the tax on income half of which is owned -- because the legislation proposes to override community property laws for tax purposes only -- by the other spouse. A simple provision in the code might be necessary here to ensure that tax liability in community property States shifts with actual income ownership.

As stated above, I believe that the most sensible approach with respect to unearned income is to allocate it to the spouse who owns the property or the income. This simplifies the problem of allocation of expenses incurred in the production of that income. The interest on mortgage payments, for example, would be deductible in the same proportion that the income from the property is reported by the spouses.

Certain factors will limit the tendency to achieve tax savings through ownership transfers to the lesser earning spouse. The first is the possibility that the marriage may end in divorce, which may create some personal unwillingness to complete such transfers. In addition, gift tax must be paid on transfers involving more than $3,000 after the ceiling on the gift tax marital deduction has been exceeded.

Personal and dependency exemptions:

It seems that simple methods of allocating personal and dependency exemptions are readily available. Each working spouse would be entitled to one personal exemption for himself or herself plus additional exemptions, if any, for age or blindness. Because children are a joint responsibility, dependency exemptions, I believe, would best be divided equally (50-50). Exemptions for other types of dependents could also be allocated on a 50-50 basis, although it seems that the multiple support agreement provision of present law, which is discussed in the report, provides another workable solution.

Itemized deductions:

Medical expenses:

Deductions for unreimbursed medical and dental expenses are already allocated, many cases, to individual spouses under present law. These expenses are easily traceable to one spouse or the other; current law provides that each spouse keep records of expenses actually paid for by himself or herself. In fact, many of the small percentage of married couples who filed separately in recent years did so specifically to produce a lower floor under deductible medical expenses. Therefore, any tracing problem arising from having to determine which spouse actually paid or incurred the expense already exists under present law, as the Joint Committee report pointed out.

Taxes:

Payments for State and local income taxes are perhaps the most easily traceable individual expenses incurred by spouses. As under current law. State and local income taxes would be deductible by the individual who is charged with and pays these taxes. The case of an individual and his or her spouse filing a joint State return and a Separate Federal return would be rare, since under most state codes it is more beneficial for two earner couples to file separately where that option exists; and many other states are patterned after the federal system or have the requirement that couples must use the same filing status on the State form that they used on the Federal form. If this case were to arise, however, the present system could be followed -- the amount deducted by each spouse would be proportional to the share of the couple's total income earned by each spouse.

Deductions for real property taxes and personal property taxes pose no allocation problem under optional separate filing -- they would be deductible only by the property owner. If property were jointly owned by the spouses, each spouse could deduct his or her allocable share of the taxes separately, according to the ratio used in reporting any income from the property.

Deductions for sales taxes, as under present law, could be allocated depending upon each spouse's separate adjusted gross income.

Interest deductions:

Interest deductions can also be allocated under an optional separate filing system with few problems. As under present law, whichever spouse is legally liable for the debt would be able to deduct interest on the debt. This could easily apply to both mortgage interest and interest on personal loans.

Charitable contributions:

Like medical and dental expenses and income tax payments, charitable contributions are easily traceable to one spouse of the other. Obviously, taxpayers currently keep careful records of charitable contributions that they plan to claim as itemized income tax deductions, and there is no reason to believe that this would not be the case under a system of optional separate filing. It would probably be necessary for couples to continue using the joint schedule in order to employ the carryover provisions of current law regarding charitable contributions (as well as other deductions to which these provisions apply, such as those for capital losses).

Casualty and theft losses:

As the Joint Committee report notes, the rules which already apply in the case of spouses who file separate returns could be followed in logical fashion.

Arbitrary Allocation Rules:

Given that the Joint Committee feels that arbitrary allocation rules "would probably not be considered fair," and that, as the preceding discussion shows, there appear to be few substantive problems with the system of allocation according to ownership, I do not feel that arbitrary allocation rules for itemized deductions are necessary.

The tendency to shift deductions to the spouse who earns the greater amount of income will, in many cases (such as deductions for real and personal property taxes), be naturally checked by the necessity of also shifting ownership of the property or income that generated the deduction, thus increasing the taxable income of the higher earner. It would be inconsistent to assume, therefore, that all unearned income sources will be shifted to the lesser earning spouse while simultaneously assuming that all itemized deductions will be shifted to the higher earner, as some critics of the bill have done.

Provisions containing income phaseouts:

Because benefits which are phased out at certain specific income levels -- such as the credit for the elderly, the earned income credit, and the disability income exclusion -- are special benefits rather than essential features of the tax code, it certainly would not violate the spirit of optional individual taxation to establish a joint limit for the phaseout of these benefits. For example, I am in no way suggesting that a person who makes $6,000 should be able to claim the earned income credit if his or her spouse makes $100,000. The only question here is whether to give a married couple the same phaseout level that is available to two single persons, or to continue the current practice of allowing two single individuals higher phaseout levels than those available to married couples who file separately. My initial inclination is to have the same phaseout available to both single and married individuals, with the proviso that the combined income of a married couple may not exceed twice this phaseout level. This would eliminate any marriage penalty in this area. This is, however, a relatively minor issue when compared to the size of the current marriage tax.

Taxation of unemployment compensation:

Again, treatment of this issue does not seem to be central to the discussion of whether to eliminate the "marriage tax." Of the solutions put forward by the Joint Committee, the purest with regard to the marriage penalty is to treat a married couple as two single individuals are treated. As the Joint Committee report notes, however, adoption of optional individual taxation would reduce the work disincentives provided by tax-exempt unemployment compensation by reducing the marginal tax rates on secondary earners.

Analysis of specific proposals:

The Joint Committee booklet declares that optional individual taxation involves essentially all of the same issues as mandatory separate filing. It would seem, however, that perhaps the most important issue -- revenue cost -- is substantially less problematic under the optional individual filing system.

It is also worth noting that the tables provided by the Joint Committee reveal that an estimated 79% of the couples who would benefit from the elimination of the marriage tax have combined incomes of less than $30,000, while 97% of these couples earn less than $50,000 when both spouse's incomes are combined

MILLICENT FENWICK
5TH DISTRICT, NEW JERSEY

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INTERNATIONAL RELATIONS
SUBCOMMITTEES:
EUROPE AND THE MIDDLE EAST
AFRICA
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November 13, 1979

Honorable Al Ullman, Chairman
Ways and Means Committee
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

As you know, I have introduced a bill, H.R. 3609, which would eliminate the "tax on marriage" by allowing optional individual taxation for married couples. There has been a great deal of discussion about how such a plan might be implemented--especially concerning the treatment of unearned income, deductions, exemptions, credits, and other specific elements of our tax system.

As it now stands, my bill provides the simplest solution to the "marriage tax" problem by stating that two-earner married couples should be allowed the option of being taxed as single individuals on each spouse's own income. Drawing up a specific set of regulations to implement such a plan would presumably then be attended to by Internal Revenue Service rulemakers. The answers to these procedural questions do, however, have a significant impact on the cost in revenue to the Treasury and, therefore, on the attractiveness of the proposal.

In view of these considerations, I would like to set down in writing the details of my view of a tax system which does not penalize a couple for simply getting married or staying married. I believe that under the conditions set forth below, the revenue cost of my proposal would remain within acceptable limits, yet the serious inequity currently facing two-earner married couples would be removed.

"Unearned" or "non-wage" income: Unearned income would be taxed like earned income--that is, separately if the couple so desires. Whichever spouse owns the title to the source of unearned income would pay taxes on it. In cases where such title (or property) is jointly owned, it will be divided equally (50/50) for purposes of taxation, unless proof is furnished that the joint ownership exists in some form other than a 50/50 division. (Additional technical rule changes may be needed with regard to capital gains to maintain parity with the present rule for offsets of gains and losses.) It is felt that the tendency to transfer ownership of sources of unearned income to the spouse who earns less will be mitigated by two factors. First, there will be some personal unwillingness to transfer all of such sources of unearned income to one's spouse because of the possibility of divorce. The present system often has the unfortunate practical effect of making it difficult for divorced wives to recover their share of property and other sources of unearned income, because it allows income arising from these sources to be "split" between spouses for purposes of income taxation while the title remains in the name of only one spouse--usually the husband. In addition, there is the requirement that gift taxes be paid on such transfers involving amounts of more than $3,000 in one year after such transfers exceed the $100,000 ceiling that applies to the gift tax marital deduction.

Deductions and exemptions: The treatment of any deductions (or exemptions) that occur in relation to the ownership of property or some other specific income-generating activity attributable to one spouse should parallel the treatment of income from that property. In other words, these would be divided to the title of such property, or according to the ratio used in reporting the activity to which the deduction or exemption is to be applied. In addition, deductions that result from expenditures on state income taxes and direct costs for medical care would be applied individually. Deductions or exemptions that occur because of joint responsibilities, including most importantly dependents, would be divided equally (50/50) between the spouses.

Under this system, the lion's share of deductions and exemptions could not be claimed by the person with the higher income unless they could be specifically attributed to the expenses or activities of that person. Children are divided equally. The potential for shifting deductions and exemptions to the spouse with the larger income is checked by the necessity of shifting the title to the source of income that has generated the deduction, thereby increasing the taxable income of that person. It would be impossible to have the income from a particular source attributed to one spouse and to simultaneously have the deductions arising from that income applied to the other spouse's income.

The floor on itemized deductions for single individuals of $2,300 would still apply to each spouse. The floor on itemized deductions is currently equal to the zero bracket amount: $3,400 for a married couple, and $2,300 for a single person, which amounts to a combined floor of $4,600 for two singles. The effect of this difference in floor amounts on the marriage tax depends on the amount of itemized deductions and their division between spouses.*

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* On the one hand, a married couple could subtract up to $1,200 more of itemized deductions from their taxable income than two single taxpayers; on the other, if only one spouse or neither has deductible expenses, the "marriage tax" is increased. (See Walter Stromquist, "Federal Income Tax Treatment of Married and Single taxpayers," Tax Notes, June 11, 1979, p. 735, and "Report of the Action Group on the Marriage Tax Penalty to the Tax Subcommittee of the Interdepartmental Task Force on Women," Sept. 1979, p. 5.)

With the elimination of the standard deduction, taxpayers whose itemized deductions total an amount below the floor are not required to pay taxes on the zero bracket amount. The zero bracket amount, which represents the amount of any individual's income that is taxed at a 0% rate, differs for marrieds and singles. This difference is an integral part of the tax rate schedule which discriminates against marrieds. Single individuals can escape taxation on the first $2,300 that they earn in a given year, yet if they decide to marry, this amount is reduced to $1,700 for each individual. Two married individuals who do not itemize their deductions, therefore, pay taxes on an extra $1,200 simply because they happen to marry. This extra penalty could be eliminated by allowing marrieds to file on the singles schedule, with its zero bracket amount of $2,300.

Credits would be applied to tax liability in a similar fashion—divided equally when they occur as a result of joint activities, expenses, investments, responsibilities, or income; and otherwise divided according to the title or other furnished evidence of individual or unequal ownership. I do feel, however, that the problem of applying tax credits is not as troubling as it might seem, since credits are applied to a taxpayer's tax liability instead of his or her taxable income. Thus, the net effect on Treasury revenue, which can be seen as a central issue in devising any proposal for revising the tax code, would be roughly similar regardless of who applies the credits to their tax liability.

Administrative and Auditing Costs: The most effective way to implement a system of optional individual taxation would certainly be to include the individual statements of both spouses on the same form. Many states (Virginia, New York, Wisconsin, and the District of Columbia, for example) already employ a form with two separate columns to allow individual taxation for marrieds, and I would advocate a similar system. Such forms would eliminate the added administrative costs that would be incurred if several million new individual forms were filed, would reduce any auditing costs that might result from the need to prevent double claiming of dependents and other deductions and exemptions, and would allow jointly held assets or income and jointly claimed deductions and exemptions to be filed on the same form.

Use of the "Unmarried Head of Household" schedule: There are, as you know, two schedules for "unmarried individuals": the "singles" schedule and the "unmarried head of household" schedule. The tax rate on the latter schedule is significantly lower. As I mentioned earlier, my approach to dependents would be to have them treated as a joint responsibility. (The purpose of this legislation is to encourage couples who wish to do so to get married or, if they are already married, to stay married. Those who opt to be taxed individually will still remain married, and therefore would not be allowed to use the "unmarried head of household schedule.") I would, therefore, send a letter of intent to the Ways and Means Committee recommending the addition of the following paragraph to Section 5, (a) (1) of my bill (a copy of which is attached):

"Any individual who is treated as unmarried under this section shall not be treated as a head of household for purposes of this title."

The problem of the "marriage tax" occurs over and over again in our system of taxation. Many deductions and credits can be claimed twice by two singles and only once by a married couple. Our general approach, as stated above, is to eliminate the marriage tax for genuinely individual expenses and income, but to split evenly the taxation of items that arise from the many joint responsibilities that come with marriage. Our major focus, it should be emphasized, is to eliminate the major element of the marriage penalty--the substantially higher marginal rate of taxation faced by the second earner, which results from the aggregation of spouses' incomes.

Thank you very much for your attention in this matter.

With all good wishes,

Yours sincerely,

Millicent

MILLICENT FENWICK
Member of Congress

MF:bgk

Enclosure.
c.c. Hon. Barber B. Conable, Ranking Minority Member, Ways and Means Committee
    Hon. Russell B. Long, Chairman, Senate Finance Committee
    Hon. Robert Dole, Ranking Minority Member, Senate Finance Committee
    Hon. Charles McC. Mathias, Jr.
    Sarah C. Weddington, Special Assistant to the President
    Karen Silver, Office of Tax Analysis, U.S. Department of the Treasury
    Tom O'Hare, Joint Tax Committee

MAR 31 1980

STATE OF MARYLAND
COMPTROLLER OF THE TREASURY
STATE INCOME TAX BUILDING
ANNAPOLIS MARYLAND 21401

INCOME TAX DIVISIO
GEORGE H. SPRIGGS,
CHIEF

JAMES T. SWISHER
ASSISTANT CHIEF

March 28, 1980

Honorable Millicent Fenwick
Congress of the United States
House of Representatives
Washington, D. C. 20515

Dear Mrs. Fenwick:

We have your letter of March 15, 1980, requesting information on our experience in handling an income tax form which allows husband and wife to file as separate individuals on the same form.

Since 1967, married Maryland taxpayers have been able to realize the benefit of filing as separate individuals but filing on the same tax form. Such filing status on the Maryland income tax return is known as "married filing combined separate returns on this form".

The "combined-separate" method of filing is beneficial to a husband and wife when both have income in excess of their personal exemption, which is $800. By using this method of filing, each receives the benefit of the lower graduated tax rates. The Maryland tax rates are 2% on the first $1,000 of net taxable income; 3% on the second $1,000; 4% on the third $1,000; and 5% on all net taxable income in excess of $3,000. In addition, the twenty-three counties and Baltimore City impose a local income tax which is a percentage of the State tax and is collected along with the State income tax. Most of the counties and Baltimore City impose the maximum 50% local income tax rate.

Therefore, the maximum benefit which a couple can realize from using the "combined-separate" method of filing is $60 in State tax and $30 in local tax, or a combined total of $90.

When a couple prepares a Maryland income tax return using the "combined-separate" method of filing, we require each individual to claim his or her own itemized deductions. However, we realize that there are situations where it is not possible to segregate the deductions between a husband and wife. Therefore, we permit couples to apportion their deductions in the same ratio as their income.

Likewise, we require each individual to claim his or her own exemption. If there are other dependents, the taxpayer providing the majority of the support for the dependent would receive the benefit of the dependent exemption.

For calendar year 1978, 1,732,004 Maryland individual income tax returns were filed. Of that number, 350,822, or 20%, used the "combined-separate" method of filing. There is no plan to eliminate such procedure.

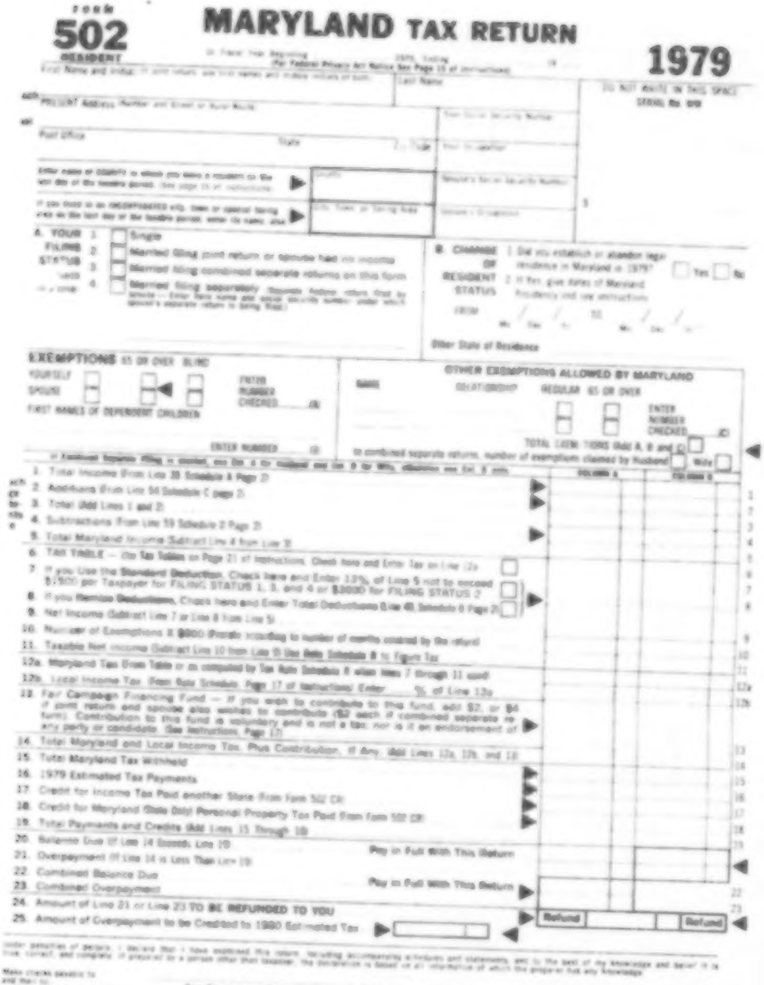
I hope I have provided you with some useful information. Should you have any questions or desire additional information, please do not hesitate to contact me.

Very truly yours,

George H. Spriggs, Jr.
Chief, Income Tax Division

GHS:nm

My telephone # is 301 269-3441.



FORM **502** RESIDENT

MARYLAND TAX RETURN

1979

(For Federal Privacy Act Notice See Page 15 of Instructions)

Last Name

PRESENT Address

Post Office

State

A. YOUR FILING STATUS

1. ☐ Single
2. ☐ Married filing joint return or spouse had no income
3. ☐ Married filing combined separate returns on this form
4. ☐ Married filing separately

B. CHANGE OF RESIDENT STATUS

1. Did you establish or abandon legal residence in Maryland in 1979? ☐ Yes ☐ No
2. If Yes, give dates of Maryland Residency and see instructions

FROM

Other State of Residence

EXEMPTIONS 65 OR OVER BLIND

YOURSELF ☐ ☐ ☐

SPOUSE ☐ ☐ ☐

ENTER NUMBER CHECKED (A)

FIRST NAMES OF DEPENDENT CHILDREN

ENTER NUMBER (B)

OTHER EXEMPTIONS ALLOWED BY MARYLAND

NAME RELATIONSHIP REGULAR 65 OR OVER

ENTER NUMBER CHECKED (C)

TOTAL EXEMPTIONS (Add A, B and C) ☐

In combined separate returns, number of exemptions claimed by Husband ☐ Wife ☐

COLUMN A COLUMN B

1. Total Income From Line 35 Schedule A Page 2
2. Additions From Line 54 Schedule C page 2
3. Total (Add Lines 1 and 2)
4. Subtractions From Line 59 Schedule D Page 2
5. Total Maryland Income (Subtract Line 4 from Line 3)
6. TAX TABLE — Use Tax Tables on Page 21 of Instructions. Check here and Enter Tax on Line 12a ☐
7. If you Use the Standard Deduction, Check here and Enter 15% of Line 5 not to exceed $1500 per Taxpayer for FILING STATUS 1, 3, and 4 or $3000 for FILING STATUS 2 ☐
8. If you Itemize Deductions, Check here and Enter Total Deductions (Line 48, Schedule B Page 2) ☐
9. Net Income (Subtract Line 7 or Line 8 from Line 5)
10. Number of Exemptions X $800
11. Taxable Net Income (Subtract Line 10 from Line 9) Use Rate Schedule B to Figure Tax
12a. Maryland Tax From Table or as computed by Tax Rate Schedule B when lines 7 through 11 used
12b. Local Income Tax (From Rate Schedule, Page 17 of Instructions) Enter ___ % of Line 12a
13. Fair Campaign Financing Fund — If you wish to contribute to this fund, add $2, or $4 if joint return and spouse also wishes to contribute ($2 each if combined separate form). Contribution to this fund is voluntary and is not a tax, nor is it an endorsement of any party or candidate. (See Instructions, Page 17)
14. Total Maryland and Local Income Tax, Plus Contribution, If Any. (Add Lines 12a, 12b, and 13)
15. Total Maryland Tax Withheld
16. 1979 Estimated Tax Payments
17. Credit for Income Tax Paid another State (From Form 502 CR)
18. Credit for Maryland (State Only) Personal Property Tax Paid (From Form 502 CR)
19. Total Payments and Credits (Add Lines 15 Through 18)
20. Balance Due (If Line 14 Exceeds Line 19) Pay in Full With This Return
21. Overpayment (If Line 14 is Less Than Line 19)
22. Combined Balance Due Pay in Full With This Return
23. Combined Overpayment
24. Amount of Line 21 or Line 23 TO BE REFUNDED TO YOU Refund Refund
25. Amount of Overpayment to be Credited to 1980 Estimated Tax

Make checks payable to and mail to:
COMPTROLLER OF THE TREASURY
INCOME TAX DIVISION
ANNAPOLIS, MARYLAND 21401

Your Signature and Date

Spouse's Signature and Date (if filing jointly, or combined separate, BOTH must sign)

Signature of Preparer Other Than Taxpayer

Address

Date

1979 MARYLAND FORM 502 PAGE 2

CHEDULES
l taxpayers must complete Schedule A. Taxpayers who itemize deductions must also complete Schedule B. Taxpayers with modifications to ederal adjusted gross income must complete Schedule C and/or D as applicable. See instructions, Page 19.

OLUMNS
l taxpayers must complete Column (C) entering the items as they appear on their Federal return.
arried individuals who filed a joint Federal return, but who choose to file combined separate Maryland returns, must complete Columns (A) nd (B), reconciling their separate income, deductions and modifications with the amounts reported jointly for Federal purposes.

CHEDULE A — INCOME AND ADJUSTMENTS FROM FEDERAL RETURN

		COLUMN (A)	COLUMN (B)	COLUMN (C)
26. Wages, Salaries, Tips, etc.	26			
27. Interest	27			
28. Dividends	28			
29. Business Income	29			
30. Sale or Exchange of Property	30			
31. Pensions & Annuities, Rents & Royalties, Partnerships, Estates or Trusts, etc.	31			
32. Farm Income	32			
33. Miscellaneous Sources	33			
34. Total (Add Lines 26 Through 33)	34			
35. Adjustments (Such as Employee Business Expenses, Moving Expenses, etc.)	35			
36. Total Income (Enter on Page 1, Line 1)	36			

CHEDULE B — ITEMIZED DEDUCTIONS AND MARYLAND ADJUSTMENTS

(If from Maryland Form 502A, Complete only Lines 45 through 49)

37. Medical and Dental Expense	37			
38. Taxes	38			
39. Interest	39			
40. Contributions	40			
41. Casualty or Theft Losses	41			
42. Miscellaneous	42			
43. Total Itemized Deductions (Add Lines 37 Through 42)	43			
44. Subtract State and Local Income Taxes Included on Line 38	44			
45. Net Deductions (Subtract Line 44 from Line 43)	45			
46. State Deduction: Preservation of Historic Property (Attach Schedule 502 H)	46			
47. Total (Add Lines 45 and 46)	47			
48. Less Deductions During Period of Non-Resident Status	48			
49. Total Maryland Deductions (Subtract Line 48 from Line 47)	49			

MODIFICATIONS TO FEDERAL ADJUSTED GROSS INCOME

CHEDULE C — ADDITIONS

50. Interest on State and Local Obligations Other Than Maryland	50			
51. Dividend Exclusion (From Federal Return)	51			
52. Taxable Tax Preference Items (Attach Form 502 TP)	52			
53. Other (Specify) (See Instructions)	53			
54. Total (Add Lines 50 Through 53) (Enter on Page 1, Line 3)	54			

CHEDULE D — SUBTRACTIONS

55. Interest on U.S. Obligations	55			
56. Pension Exclusion (Complete Schedule Below)	56			
57. Child and Dependent Care Expenses (See Instructions, Page 19)	57			
58. Other (Specify) (See Instructions)	58			
59. Total (Add Lines 55 Through 58) (Enter on Page 1, Line 4)	59			

ENSION EXCLUSION COMPUTATION

(For use only if 65 or over, or totally disabled — See Instructions)

		COLUMN (A)	COLUMN (B)
60. Net Taxable Pension and Retirement Annuity Included as Income in Federal Return (or $5,700 whichever is less)	60		
61. Less: Benefits Received Under the Social Security Act and/or the Railroad Retirement Act	61		
62. Allowable Pension Exclusion (Subtract Line 61 from Line 60) Enter as a **Modification** on Schedule D Line 56 above	62		

TAX RATE SCHEDULE	If amount on Page 1, Line 11 is: Over	But not Over	Amount of Tax (Enter on Line 12a)
	$ 0	$1,000	2% of amount on Line 11
	1,000	2,000	$20 plus 3% of excess over $1,000
	2,000	3,000	$50 plus 4% of excess over $2,000
	3,000	—	$90 plus 5% of excess over $3,000

MAR 31 1980

COMMONWEALTH of VIRGINIA
DEPARTMENT OF TAXATION
RICHMOND 23282

March 25, 1980

The Honorable Millicent Fenwick
Member of Congress
1212 Longworth House Office Building
Washington, D.C. 20515

Dear Mrs. Fenwick:

Thank you for your letter and the enclosures relating to your proposal to eliminate the "marriage tax" in the federal income tax structure. Regrettably prior commitments make it impossible for me to testify at the House Ways and Means Committee hearings on April 2 or 3 on this issue. However, I would like to briefly relate to you Virginia's experienc with its tax treatment of two earner married couples.

As you know, Virginia conforms to the federal tax structure with respect to definitions of income and allowable subtractions and itemized deductions. However, Virginia utilizes only one tax rate schedule for all taxpayers, regardless of marital status and regardless of how married couples elect to file.

Virginia permits two earner couples the following filing options. If the couple files a joint federal tax return, they may elect to file either a joint Virginia return or a "combined" return. The combined return allows each spouse to compute his/her tax liability as though single, even though the couple files only one state tax return. The Virginia return provides two columns, one to be used by the husband and the other by the wife when they elect to file a combined return. (A copy of the Virginia tax packet is enclosed.) The joint return, as at the federal level, requires that the two incomes be totaled and then taxed. Obviously, the computation of two tax bills against the state's tax schedule as though the individuals are single is less costly than the one tax bill using joint income measured against the same schedule. In addition, taxpayers who file on the combined return are permitted to allocate dependent exemptions and the standard or itemized deduction as the couple mutually agrees, in order to minimize their tax bill.

If taxpayers file separate federal tax returns, they may elect to file separate Virginia returns (i.e., two separate tax returns) or the "combined" return (i.e., one tax return but each spouse utilizing his/her own column on that return). If the couple elects to file separately, they must allocate their dependent exemptions and deductions in the same manner as for federal purposes. However, the tax advantage of computing two separate tax bills is still present.

Administratively, there have been no significant problems with the current Virginia law. The same tax form can be used by all taxpayers regardless of marital status and how the married couple elects to file (i.e., jointly, separately, or "combined"). We have estimated that the option of taxing each spouse's income separately as though they were single as opposed to jointly has resulted in a tax savings (or alternatively, a revenue cost) of approximately 7.8 percent of the total state income tax liability. For 1978, the most recent year for which we have data available, the breakdown of returns by filing status is as shown below:

	Number of Returns	Percent of Total
Single	927,533	45.8
Married-Joint	528,020	25.9
Married-Combined	484,433	23.9
Married-Separate	87,312	4.3
Total	2,027,298	100.0

These data indicate that over half of all married couples elected to file a Virginia return that permitted each spouse to calculate a separate tax bill.

While the Virginia law provides for the application of one tax rate schedule to each individual's income and thus avoids the type of marriage penalty associated with the various federal tax rate schedules, the Virginia tax structure does contain a moderate tax disadvantage in marriage in its standard deduction provisions. Specifically, the same standard deduction is granted to married couples as is granted to single individuals, enabling two persons to receive a larger standard deduction before marriage than after marriage. I am enclosing an excerpt from an issue paper on state income tax reform that discusses this problem in greater detail.

I hope this information is helpful to you. If you should have further questions on this subject, please do not hesitate to contact me.

Sincerely,

W. H. Forst
State Tax Commissioner

cdm

Enclosures

slightly. Since this alternative only increases the upper bound on the current standard deduction and essentially maintains the same treatment for Virginia taxpayers who have been unaffected by the various federal changes, it is significantly less costly than the previous alternative. For 1977, the estimated cost would have been approximately $13 million. For this alternative, however, a greater relative share of tax relief flows to higher income taxpayers. Only about 10 percent of the total tax relief accrues to taxpayers with under $15,000 in income and about 60 percent of the total goes to taxpayers with income between $15,000 and $25,000. This shift in the distribution of tax relief is consistent with the above example showing that taxpayers would receive a larger standard deduction only to the extent that their federal AGI is greater than $13,333 and that only taxpayers with federal AGI in excess of $22,667 would receive the new maximum standard deduction. Under this alternative there is relatively no change in both the aggregate effective tax rate and the effective tax rates for the various income classes. We estimate that if this alternative were to become effective for taxable years beginning on and after January 1, 1980, it would cost approximately $28 million in fiscal year 1981 and $23 million in fiscal year 1982.

Tax Treatment of One Earner Versus Two Earner Couples

The Nature of the Federal Marriage Penalty

The tax penalty on marriage is a phenomenon that has achieved notoriety at the federal level as the result of the federal requirement that single taxpayers and married taxpayers who file separate returns use different tax rate schedules in computing their tax liability. The federal rate schedule used by married persons who file separately is somewhat more progressive than the schedule used by single persons, and

best copy available

erefore two persons who both continue to work after marriage and file parate tax returns pay more tax on the same amount of taxable income ter marriage than the total amount paid by the two of them before rriage.

e federal tax penalty on marriage of the result of 1969 legislation at attempted to reduce the differential in the tax treatment of single rsons and married couples who filed jointly. Prior to the enactment this legislation married couples who filed separately and singles re both subject to the same tax rate schedules, but married couples o filed jointly were permitted to split their joint income.1/ Income litting for joint taxpayers enabled a couple with one earner to allote 50 percent of total earnings to each spouse, and the couple's tax s essentially computed on each spouse's share using the basic rate for ngle and married separate returns. In other words, income splitting d the effect of doubling the basic width of each of the taxable income asses for joint taxpayers, and it consequently reduced for them the ogressivity of the rate schedule. Income splitting thus granted a ax benefit" to persons who married, provided one spouse did not have come. Prior to enactment of the 1969 law two single persons who rried and both continued to work paid the same total tax on the same ount of taxable income before and after marriage.

wever, while income splitting generated a tax benefit for one earner uples after marriage, it created a differential in the tax liabilities

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1/ Income splitting was adopted in 1948 as a measure to correct r differences in the federal tax treatment of couples residing in munity property states and couples living in other states. States th community property laws treated a couple's income as if it were ned equally by a husband and wife. Thus, couples from these states re filing separate returns and paying at lower marginal rates on the lit amounts, while couples in other states paid at higher marginal tes on the unsplit total.

of single persons whose taxable income was equivalent to a married couple with one earner. In other words, a single individual paid more tax than a married couple with equivalent income. It is generally agreed that married couples with one earner should pay less tax than single persons when both taxpayers have the same income, because the couple has less ability to pay taxes than the single individual.[1] However, the tax advantage for joint taxpayers created by income splitting relative to single persons was apparently viewed to be excessive. Thus, pressures to ease the federal tax burden on singles resulted in the adoption of a special tax rate schedule for them, despite arguments that it was more appropriate to adjust the relative tax burden of singles through modifications to deductions and exemptions than through the rate schedule.

Under the provisions of the Tax Reform Act of 1969, married taxpayers who file separately still compute their federal tax liability using the old rate schedule that they and single persons both previously used. The new rate schedule adopted for single taxpayers is less progressive than the old rate schedule (i.e., current rate schedule for married separate taxpayers) but still somewhat more progressive than the rates applicable to married joint taxpayers. However, under the current federal law the tax liability of a single person is never more than 20 percent greater than the tax liability of a married couple with equivalent taxable income who files jointly. There is still a moderate tax benefit in marriage for couples with one earner, but the new, less progressive rate schedule for singles has resulted in a "marriage penalty" for two earner couples.

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[1] See, for example, Richard A. Musgrave and Peggy B. Musgrave, Public Finance in Theory and in Practice, Second Edition, (New York: McGraw-Hill Book Company, 1976), p. 276.

e the technical definition of the marriage penalty relates to the erent federal tax rate schedules for single persons and for married les who file separately, some critics also refer to the impact of different federal zero bracket amounts for single persons and ied couples as a further disadvantage to marriage. Under the provi- s of the current federal law, taxpayers who do not claim itemized ctions are granted a zero bracket amount of nontaxable income. For le persons, the zero bracket amount is $2,300, and for married les the zero bracket amount is $3,400, or $1,700 per spouse if the le files separately. Thus, prior to marriage two single persons ive a total of $4,600 as their zero bracket amount, but after iage the couple receives $3,400, or $1,200 less. These different bracket amounts have the impact of increasing taxable income for earner couples after marriage and serve to compound the federal iage penalty problem, since, as noted above, two earner couples who separately are subject to a more progressive tax rate schedule.

ddition, there is a further disadvantage for two earner couples who separately in favor of one earner couples who file jointly. Even gh the federal tax rate schedules for married separate taxpayers and ied joint taxpayers are designed so that if each of the two married les has the same total taxable income they pay the same tax, some erts believe that the couple with one earner has a greater ability to taxes. This is because the spouse who does not earn money income ll generates income in the form of services to the family.[1/] Such

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[1/] George F. Break and Joseph A. Pechman, Federal Tax Reform: The ossible Dream?, (Washington, D.C.: The Brookings Institution, 1975), 34.

income is not easily measurable, and for this reason it is not practical to make it taxable. However, according to this view, the tax paid by the two earner couple is proportionately greater than the tax paid by the one earner couple.

Virginia's Treatment of Married Couples and Alternatives

Virginia law provides for the use of one rate schedule for single persons, one or two earner married couples who file jointly, and two earner couples who file separately. Thus, there is no marriage penalty in the Virginia tax rate schedule, since persons who marry and both continue to work pay according to the same tax rate schedules before and after marriage. However, there is a "tax disadvantage" in marriage for two earner couples if they elect to file a married joint return rather than a married separate return, since it is likely that a couple's joint taxable income falls in a higher marginal tax bracket than if they compute their tax liabilities separately. However, married taxpayers who both have income are alerted to this disadvantage in the income tax instruction packet and are encouraged to file separately on the combined return.

While there is no marriage penalty in the Virginia tax rate schedule, the current Virginia standard deduction does impact single persons who marry similarly to the federal zero bracket amounts. Current law provides a standard deduction of 15 percent of federal AGI, with a minimum of $1,300 and a maximum of $2,000. These limits apply to both single persons and married couples. Thus, two earner married couples receive a standard deduction that is as much as $2,000 less than the total of the standard deductions that they received as single persons. For example, assume two single persons with federal AGI's of $6,000 and $10,000, respectively. Before marriage the first individual receives a standard deduction of $1,300, and the second individual receives a standard deduction of $1,500, with the two taxpayers receiving a total of $2,800. If the two persons marry and both continue to work, and if we assume that they file separately on a combined return, their standard deduction is then based on $16,000 of federal AGI and is $2,000, or $800 less than the total amount that they received as singles. This $2,000 may be allocated between the husband and wife as they mutually agree in order to minimize their combined tax bill, but the optimal allocation does not offset the tax increase that occurs as the result of a decrease in the permissible standard deduction.

If Virginia wished to eliminate the disadvantage in marriage created by the current standard deduction, an alternative would be to provide the same standard deduction to all individuals. For example, instead of granting a current standard deduction at 15 percent of federal AGI ranging from $1,300 to $2,000 to both single persons and married couples, a new Virginia standard deduction for married couples could be provided still based on the same percentage of federal AGI but with a range from $2,600 to $4,000. This alternative would relate favorably to the notion that married couples with one earner should pay less tax than single persons when both taxpayers have the same income, and obviously it would equate the treatment of two single individuals to a two earner couple. In addition, this alternative would also move the upper bounds on the Virginia standard deduction closer to the current federal zero bracket amounts, although the Virginia maximum and the federal zero brackets would still not be brought into uniformity. For example, the federal zero bracket amount for singles would still be $300 greater than the maximum Virginia standard deduction, but the federal zero bracket amount for couples would be $600 less than the maximum Virginia standard deduction.[1] On the other hand, there is, as noted earlier, a moderate federal tax disadvantage in marriage associated with the federal zero bracket amounts. Clearly, if state policy makers elect to either conform fully to the federal zero bracket amounts or adopt them as new Virginia upper bounds (as outlined in an earlier section), the Virginia marriage disadvantage cannot be removed. However, if state policy makers elect to solve the Virginia marriage disadvantage, then there will have to be a tradeoff between its solution and complete conformity to the federal structure.

Table 7 presents the same distributional data for this alternative as presented earlier. When compared to the current structure (see Table 4), the number of tax returns with itemized deductions declines slightly from about 28 percent to 24 percent. In 1977, this alternative would have cost approximately $26 million, with about three-fourths of total tax relief accruing to taxpayers with incomes less than $25,000. Again,

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[1] However, it is interesting to note that the alternative outlined here could provide partial relief to taxpayers who are caught between the Virginia maximum standard deduction and the federal zero bracket amount. That is, for married taxpayers whose itemized deductions are only slightly under the $3,400 federal zero bracket amount and who are limited to a $2,000 Virginia standard deduction, this alternative could enable them to receive a larger Virginia standard deduction to the extent that 15 percent of their federal AGI is greater than $2,000. Single taxpayers, on the other hand, who are similarly caught between the federal zero bracket amount of $2,300 and the $2,000 Virginia standard deduction would not benefit. However, even if such a taxpayer had $2,299 of itemized deductions, it is likely that at least $299 of these deductions are state income taxes, which are not allowable as an itemized deduction for Virginia purposes anyway.

TABLE 7 -- THE IMPACT OF DOUBLING THE UPPER AND LOWER STANDARD DEDUCTION BOUNDS FOR MARRIED TAXPAYERS ON THE DISTRIBUTION OF TAX RETURNS BY TYPE OF DEDUCTION, TAX LIABILITY, AND EFFECTIVE TAX RATE

		Distribution of Returns By Type of Deduction		Tax Liability				
					Change From Current Structure			
Virginia AGI Class	Total No. of Returns	No. of Standard Deductions (Percent of Returns)	No. of Itemized Deductions (Percent of Returns)	Amount	Amount	Percent of Total	Average Tax Per Return	Effective Tax Rate
$ 0 - 999	100,820	81,702 (80.2%)[a]	2,131 (2.1%)[a]	$ 70,122	$- 4,069	0.01	$ 1	0.1%
1,000 - 1,999	123,304	119,434 (96.9%)[a]	2,630 (2.1%)[a]	233,638	- 30,863	0.1	2	0.1
2,000 - 2,999	108,393	105,221 (96.9%)[a]	2,294 (2.1%)[a]	1,169,777	- 94,319	0.4	11	0.4
3,000 - 3,999	95,654	91,758 (95.9%)	3,596 (3.8%)	2,282,417	- 202,439	0.8	23	0.7
4,000 - 4,999	96,637	92,234 (95.4%)	4,153 (4.3%)	3,757,293	- 432,120	1.7	39	0.9
5,000 - 5,999	101,432	95,682 (94.5%)	5,438 (5.3%)	5,831,716	- 660,663	2.6	57	1.0
6,000 - 6,999	95,217	89,301 (93.8%)	5,700 (6.0%)	7,683,363	- 788,811	3.1	81	1.2
7,000 - 7,999	87,894	80,556 (91.7%)	7,146 (8.1%)	9,498,051	- 975,144	3.8	108	1.4
8,000 - 8,999	81,331	72,868 (89.6%)	8,363 (10.3%)	11,484,446	- 1,191,682	4.7	141	1.7
9,000 - 9,999	76,272	67,488 (88.5%)	8,736 (11.5%)	13,141,314	- 1,371,208	5.4	172	1.8
10,000 - 10,999	71,827	61,327 (85.4%)	10,360 (14.4%)	14,616,474	- 1,363,393	5.3	203	1.9
11,000 - 11,999	66,767	54,847 (82.1%)	11,791 (17.7%)	15,817,811	- 1,176,662	4.6	237	2.1
12,000 - 12,999	62,818	49,307 (78.5%)	13,277 (21.1%)	16,888,666	- 1,011,557	4.0	269	2.2
13,000 - 13,999	61,034	46,401 (76.0%)	14,558 (23.8%)	18,433,981	- 869,433	3.4	302	2.2
14,000 - 14,999	59,104	42,701 (72.2%)	16,387 (27.7%)	20,020,936	- 876,761	3.4	339	2.3
15,000 - 15,999	55,630	38,261 (68.8%)	17,337 (31.2%)	20,971,176	- 868,366	3.3	377	2.4
16,000 - 16,999	52,063	32,861 (63.1%)	19,158 (36.8%)	21,516,723	- 799,532	3.1	413	2.5
17,000 - 17,999	48,381	28,255 (58.4%)	20,090 (41.5%)	21,781,483	- 759,386	3.0	450	2.5
18,000 - 18,999	45,863	25,648 (55.9%)	20,215 (44.1%)	22,514,257	- 849,923	3.3	491	2.6
19,000 - 19,999	43,510	23,371 (53.7%)	20,137 (46.3%)	23,028,961	- 915,360	3.6	530	2.7
20,000 - 20,999	38,865	20,354 (52.4%)	18,487 (47.6%)	22,881,748	- 897,876	3.5	588	2.8
21,000 - 21,999	35,636	18,115 (50.8%)	17,505 (49.1%)	21,556,013	- 880,762	3.4	605	2.8
22,000 - 22,999	32,543	16,286 (50.0%)	16,249 (49.9%)	21,034,131	- 879,284	3.4	646	2.9
23,000 - 23,999	29,530	14,899 (50.4%)	14,615 (49.5%)	20,307,633	- 867,021	3.4	688	2.9
24,000 - 24,999	26,421	13,129 (49.7%)	13,284 (50.3%)	19,260,968	- 818,321	3.2	729	3.0
25,000 - 29,999	99,639	45,474 (45.6%)	54,109 (54.3%)	85,146,940	- 3,090,229	12.1	855	3.1
30,000 - 34,999	58,100	21,485 (37.0%)	36,583 (63.0%)	63,915,958	- 1,420,990	5.6	1,100	3.4
35,000 - 39,999	34,061	9,997 (29.4%)	24,036 (70.6%)	46,394,562	- 617,913	2.4	1,362	3.6
40,000 - 44,999	21,672	5,368 (24.8%)	16,296 (75.2%)	35,152,908	- 333,724	1.3	1,622	3.8
45,000 - 49,999	13,482	2,807 (20.8%)	10,643 (78.9%)	25,489,168	- 169,904	0.7	1,891	4.0
50,000 - 74,999	21,736	3,937 (18.1%)	17,788 (81.7%)	53,488,735	- 263,983	1.0	2,461	4.2
75,000 - 99,999	5,214	751 (14.4%)	4,455 (85.4%)	19,979,367	- 43,885	0.2	3,831	4.5
100,000 & Over	5,128	513 (10.0%)	4,599 (89.7%)	42,079,094	- 32,347	0.1	8,206	4.7
TOTALS	1,957,183	1,472,740 (75.2%)	462,122 (23.6%)	$726,301,817	$-25,528,310	100.0	$ 371	2.7%

NOTE: Details may not add to totals due to rounding.

SOURCE: Department of Taxation income sampling model, taxable year 1977 data. (Reference Structure 30)

[a] Percentages do not add to 100, because for some returns at low income levels personal, dependent, age and blindness exemptions are sufficiently large to reduce AGI to zero without deductions.

married taxpayers with total incomes greater than $13,333 (who are currently limited to a standard deduction of $2,000) receive the most tax relief, since most taxpayers with incomes under this amount would be unaffected by this alternative. Only married taxpayers with incomes totalling $26,667 or more would receive the $4,000 maximum standard deduction. When we examine the effective tax rates presented in Table 7 we see a very insignificant decline both in the aggregate and for the various income levels. If the standard deduction for married couples were doubled effective January 1, 1980, we estimate that it would result in a $55 million revenue loss during fiscal year 1981 and a $45 million revenue loss during fiscal year 1982.

In addition, there is a second disadvantage to marriage under the current Virginia income tax structure that is caused by the minimum filing requirement. Under the provisions of a law enacted at the 1978 session of the General Assembly that became effective for taxable year 1979, no income tax is imposed and no tax return must be filed by an individual with less than $3,000 in Virginia AGI or by a married couple with less than $3,000 in Virginia AGI. Thus, it is likely that the tax and filing exemption enjoyed by two low income single persons would be lost after marriage.

If Virginia wished to remove this relatively insignificant marriage disadvantage, then the income constraint for married couples should be twice the income constraint for singles. The revenue cost of the current law is estimated to be approximately $1.2 million per year. If the current income constraint for married couples were doubled, we estimate that the revenue cost would increase by $2.8 million per year. On the

ner hand, if the current income constraint for singles were halved, we
timate that the revenue cost would decline by $0.4 million per year.

Treatment of Retired and Elderly Persons

ior to 1976, Virginia extended income tax relief to the elderly in the
rm of retirement income exclusions.[1] These exclusions were available
ly to certain sectors of retirees and their survivors, and the amount
tax relief to the favored sectors was not uniform. Under the old
w, elderly persons who received no formal pension income but who had
mited earnings or investment income received no exclusion. Also, the
d law did not explicity recognize the different amounts of nontaxable
cial security retirement benefits received by elderly persons.

nce the amounts of the retirement income exclusions varied between
tirement sectors, between retirees and survivors, and between the age
asses, and since the old law did not take into account differences in
e amounts of social security benefits received by elderly persons, it
abled certain taxpayers to receive substantially different amounts of
x-exempt income. Therefore, the old law violated the concept of hori-
ontal equity with respect to retired and other elderly taxpayers.
lso, the amount of tax relief provided by the exclusions increased with
e level of taxable income. The exclusions, therefore, also violated
e concept of vertical equity. After several years of study of the
quity implications of retirement income tax relief the old exclusions
ere therefore repealed, and the current Virginia tax credit for persons
ge 62 and over was adopted at the 1976 session of the General Assembly.[2]

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[1] An exclusion reduces the level of taxable income.

[2] A credit is a direct reduction in tax liability.

The Chairman. Thank you very much, Senator, for that most eloquent plea. Mr. Corman?

Mr. Corman. Just one comment. You have heard the old refrain, "It is June in January." If you do it in January you can prorate the cost over 12 months and it may be that June will lose its attraction as the month of weddings.

Senator Mathias. Well, even the fiscal year isn't sacred any more, so that can change.

The Chairman. Mr. Conable?

Mr. Conable. I have no comment, Mr. Chairman. I appreciate the Senator's testimony. It was as said, eloquent, seasonal, everything about it was fine.

Senator Mathias. I would say to the committee what a tremendous job Mrs. Fenwick has done in this whole matter and I know what a tremendous disappointment it was for her not to be here. We would certainly not have that kind of scoreboard to display of one-fourth of the Members of the Senate and over one-half of the House if it had not been for her extraordinary commitment to this cause.

The Chairman. We agree. We are very sorry that her illness prevented her from being here. Are there further questions? Mr. Guarini?

Mr. Guarini. Mr. Chairman, Senator, I appreciate your testimony and your poetry. It's enough to make a single man wish he was going down the aisle in June.

Senator Mathias. Try it, you'll like it.

Mr. Guarini. Let me ask you. One of the objections that was given to the bill was that with closely held business, joint property, trusts, et cetera, there will be different incomes that will be involved between a man and wife, that it would create a problem if they took the optional separate returns.

Could you address yourself to this? Let me tell you what I am driving at. We have an advantage that married people would get as the result of capital gain taxes if they have joint properties or if they have kept the properties separate. How would it not be a disadvantage to a single person if a married couple had all of the other advantages concerning joint property, trusts, closely held businesses, et cetera, which was pointed out by the Treasury Department as being a drawback of this particular bill?

Senator Mathias. Of course, these are not problems which would be created by adoption of any one of the proposals to eliminate the marriage penalty. You have similar difficulties under the existing tax system. Any married couple who makes some determinations as to how they are going to throw income, if they have any option about it whatever, have problems of this sort.

The Treasury already has problems in dealing with this, so you will not create any new problems. In fact, you may force consideration of these very questions, which ought to be considered.

I think you also have to consider and think about the fact that a married couple who really wants to do anything serious in the way of tax avoidance in this area has to do something about the ownership of property. That has implications that they may not wish to undertake. I do not think this is a serious objection, frankly.

Mr. Guarini. Investment income has always been somewhat of a problem. You know, we never specify in the income tax forms exactly who owns what. We allow taxpayers to just lump it together and then when it comes time for divorce, we have all kinds of difficulties and hard feelings that are created and court cases over what share the wife and a husband have.

Then when it comes to estates, the Government often might get short-changed because there are different ways with closely held businesses that certain things can be worked out. So it is never really delineated on the income tax return for a permanent record as to who does actually own what.

It causes us a lot of fuzziness in some of our tax planning, not just during the lifetime of the person, but there are considerations when that marriage breaks or when a death does occur.

I am just wondering whether or not it would be wise to think in terms of amending the suggestions that you make for optional separate returns, Senator, that the income be kept separate; so that as a single person has his income that is kept separate, so does a married person have his income kept separate, which would make it easier for filing State returns, separations, divorces, and other problems that occur within the marital status.

Senator Mathias. I think the specter that is before you that has inspired your question is that a couple might allocate the investment income to the lower earning spouse.

Mr. Guarini. That is right.

Senator Mathias. And the deductions and exemptions to the higher earning spouse. I think that is so inconsistent it is not likely to happen. I see no problem with what you propose, that the unearned income actually goes to the person who owns the property that generated it.

Mr. Guarini. Then we would be truly fair to single people and married people.

Senator Mathias. If they have jointly owned property, you split that income 50–50 between them.

Mr. Guarini. You subscribe?

Senator Mathias. In life today we all leave a very broad paper trail behind us anyway. These matters can be pretty clearly identified, and I think it would be a reckless or careless taxpayer that did not pretty well make sure that the paper trail reflected what the facts are.

Mr. Guarini. Well, would you suggest that we not only delineate the income that a person earns, but also delineate the investment income that a person has?

Senator Mathias. I think that is clearly true if they are going to file separately.

Mr. Guarini. Thank you.

The Chairman. Are there further questions? Mr. Rousselot.

Mr. Rousselot. Mr. Chairman, let me thank our colleague for being here today, and let me thank him for all the time and effort that he has spent on this issue. This is the second time in the same week that you and I have agreed on an issue.

Senator Mathias. I think that is a noteworthy achievement.

Mr. Rousselot. I really appreciate it and especially the opportunity to make a change in law that is long overdue. We thank you for being here to add, as I said, substantial credibility to the necessity for getting at this inequity.

Senator MATHIAS. Well, Mr. Chairman, I thank Mr. Rousselot very much. He has been very patient in his attendance here and following these issues. We do share a very real concern about issues that are affecting the equity of the tax system and, therefore, ultimately the effectiveness of the Government's ability to raise revenue over a long period of time.

The CHAIRMAN. Thank you very much, Senator. We appreciate your testimony.

Senator MATHIAS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Is our colleague, Mr. Downey here?

Mr. CONABLE. His statement is in the record, Mr. Chairman.

The CHAIRMAN. Let's call to the witness table our colleague, Don Quayle from Indiana, who will introduce one of our witnesses. I will recognize Mr. Quayle first, but in addition on this panel we want to call to the witness table Dr. Sydney Key, Ralph E. Smith, June A. O'Neill, Pamela Gann, Al Hartgraves, and Ned S. Schwartz.

If you will come to the witness table we would be happy to hear you. At this time it is our privilege to recognize our colleague from Indiana, Dan Quayle.

Mr. ROUSSELOT. Mr. Chairman, can I just briefly say I have to go attend a luncheon but I wanted to compliment my colleague, Mr. Quayle, for being here to participate with his State representative, Phillis Pond. I known that my colleague has been upfront on this issue, has been concerned, and has worked for a long time with Mrs. Fenwick to make sure this committee takes up this issue.

I want to thank both he and his colleague, Mrs. Pond, for being here to present comments. I have already reviewed their testimony and, Mr. Chairman, I hated to interject but I do have to keep moving as they say in this business.

Mr. SCHULZE. Would the gentleman yield? I would like to associate myself with his remarks and commend our colleague for his leadership on this issue. His fight has been a valiant one, without which we would not be here today. He is to be commended for his efforts.

The CHAIRMAN. Without objection, your full statement will appear in the record, Mr. Quayle. You may proceed, sir.

STATEMENT OF HON. DAN QUAYLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. QUAYLE. Thank you. I thank my colleagues, and in the interest of brevity I shall just summarize my statement and ask unanimous consent it be entered in the record.

Mr. Chairman and members of the committee, I have the privilege of introducing State Representative Phyllis Pond, who was instrumental in bringing the marriage tax penalty to my attention a year ago in 1979.

She introduced a bill in the Indiana General Assembly that would have allowed a 24-hour legal separation between December 31 and January 1 to get around the marriage tax penalty in this country.

It passed the House of Representatives but it did not get through the Senate.

This last session, the 1980 session of the general assembly, she took another route. She took a route that the State of Indiana would petition the Congress to repeal the marriage tax penalty and because of her interest and being a constituent of mine and an active member of the Indiana Assembly, I became interested in it.

Just a quick historical note, Mr. Chairman: In 1969 people were coming before this committee as singles, saying we feel penalized and we would like a reduction in our tax rates. As the Congress responded in 1969 those tax rates were reduced and now we have created what is commonly referred to as the marriage tax penalty.

In 1980 you see married couples coming forth and asking help in trying to eliminate this inequity. And as Senator Mathias said it, is an inequity. It is not fair. I was glad to see the administration not come out against it.

I will just share one short letter with you, Mr. Chairman, that is illustrative of many letters that I have received on this subject since speaking out on it. I am sure Mrs. Pond can add to it. It is from Indianapolis, Ind.:

> I am 62 years old and my wife is 58. We were married in 1977. Due to the marriage our income tax is much higher than it had been. We will have to obtain a divorce this year if no legislation is passed to alleviate the problem

Mr. Chairman, I thank the committee for having these hearings. It is a step forward to deal with this problem in a very direct way. And I am hopeful that as a tax cut bill emerges closer to election time that the repeal of the marriage tax penalty will be part of that.

It is my great privilege to introduce not only a constituent of mine from Fort Wayne, State Representative Phyllis Pond, but a friend and a leader in the Indiana General Assembly.

[The prepared statement follows:]

Statement of Hon. Dan Quayle, a Representative in Congress From the State of Indiana

Over a year ago I received the following letter from one of my constituents in Indianapolis, Indiana:

> I am 62 years old and my wife is 58. We were married in 1977 * * * Due to the marriage, our income tax is much higher than it had been. We will have to obtain a divorce this year if no legislation is passed to alleviate the problem.

This letter is only one of the many letters I have been receiving from my constituents of all ages and all walks of life regarding the financial burden the marriage penalty places upon them. They underscore the inequity of the present tax system which your Committee must examine through these hearings.

Mr. Chairman, I would like to take this opportunity to thank you for this time to express my very strong concern over the marriage penalty. I applaud Mrs. Pond's leadership in efforts to alleviate the marriage penalty at the State level. I would like to discuss the need to change this inequity in our federal tax laws.

Fifty-seven percent of today's families have both the husband and wife working. While a secondary income in a family—usually the woman's—was once a luxury, it has become an economic necessity in this time of skyrocketing inflation. One recent projection indicates that the female labor force participation will continue to grow through 1990 by about 1 million per year, nearly all of whom will be married women with minor children. Thus by 1990, approximately 70 percent of all married women will be in the work force, including those women with children. More couples in the future, not fewer, are going to be subject to the marriage penalty. The time has come for action at the federal level.

The present tax code seems to ignore this increasing trend toward two-earner couples. Two aspects of the tax code are responsible for the marriage penalty: (1) the zero-bracket amount—formerly the standard deduction—is $2,300 for a single person and $3,400 for a married couple filing a joint return. This is unfair to married couples who, had they remained single and chosen to "live in sin," could have gotten a total deduction of $4,600 or $1,200 more than the couple; (2) marginal tax rates—those that apply to the last few dollars earned—generally are higher for married people than for singles, due to the progressivity of the tax structure. Our tax code is written so that proportioned tax rates rise as income increases. When two spouses combine their income their marginal rate goes up. Under present law, if the wife decides to work to help support the family, her income is assumed to be added to the husband's "base" income, and her first dollar of income will be taxed at the same rate as the last dollar earned by her husband. Every other dollar will be taxed at progressively higher rates. Her income, as a result, is taxed at a higher rate than her husband's. This, combined with new expenses for child care, housekeeping services, commuting and other work-related expenditures, creates a real work disincentive.

The problem we face is to insure equal treatment under the law for each of the three types of personal tax units recognized by the federal tax code: single person, married persons filing separately, and married persons filing jointly. Prior to 1969, single persons felt discriminated against by effectively higher taxes than married couples. Some single persons were paying as much as 42 percent more than married couples with comparable incomes.

In the Tax Reform Act of 1969, Congress responded to growing pressure to end this discrimination against single persons by enacting a rate schedule which gave lowered tax rates for single persons, thus creating the marriage penalty. This Act, which relieved the pressure on single persons by giving a separate tax-rate schedule structured so that none of them would pay more than 20 percent in excess of a married person's tax, simultaneously instituted what has come to be known as the marriage tax—the higher tax burden resulting from figuring the tax on combined, rather than split, incomes. Trying to help one side is always going to cause perceived inequity to the other side.

At least one of the four basic tenets of our tax system must be violated at any given time: (1) the tax system should be progressive; those making more money should pay proportionately more in taxes, (2) all other things being equal, tax units with equal incomes should pay equal taxes, (3) an individual's tax burden should not change with marriage, and (4) a single person should not pay more tax simply because he is single. Because the U.S. government tax policy is based on progressivity, at least one of the other tenets of the tax system will always be violated.

When the current tax system was instituted, the economic environment and the social situation were different, with fewer women in the work force. It is clearly time to change our tax system to accommodate this new reality. I have introduced legislation, H.R. 3386, which allows married persons to file as if they were single without affecting their married status. This would allow each working person to take the single standard deduction of $2,300, for a total deduction of $4,600 per couple, instead of the married deduction of $3,400.

I want to stress the fact that this tax penalty is universal in its impact. It affects the young, the old, and people from both the upper and lower income brackets. To illustrate the widespread impact of this burden I am including comments I have received from Indiana residents on the marriage penalty over the last year:

> We are 32 and 26 and have been married for two years . . . have completed our five-year apprenticeships and make a good income between us. We both claim single with zero dependents all year long so we can as much as possible taken in withholding . . . last year a total of $13,808.35. After figuring our taxes, we found we 'owed' the federal government $1,319 more. We had a CPA figure what our taxes would have been if we were single . . . instead of owing $1,319, we would have received a refund of $1,250. Quite a price for being married—and also a pretty stiff penalty. . . . Times are changing and it is becoming more and more of a necessity for families to have two breadwinners instead of one.
>
> —A couple in Warsaw, Ind.

I have been a tax preparer for 10 years and have seen growing hostility by vo-wage earner couples because of the inequities in our tax laws . . . On some eturns I have prepared, couples paid as much as $2,500 extra because they are arried. On my own personal return we paid $743 marriage tax.

—A man in Elwood, Ind.

My wife and I are considering a divorce and planning to live together afterards. We are both sixty years of age and both wage earners.

—A couple in Indianapolis, Ind.

Mr. QUAYLE. Mr. Chairman, the Federal Government should not be the position of discouraging, through the Tax Code, one form of festyle over another. It is unfortunate that our long-standing comitment to progressivity effectively forces us to do this. But if we must ive with this progressive tax structure, then we must also do everyhing possible to promote equity within it. In this age of terrible ressures on the family, let us alleviate the pressure created by the arriage tax penalty. The Federal Government must not add yet nother burden to the many forces which threaten to overwhelm the amily.

The CHAIRMAN. Thank you very much, Dan. We appreciate your eadership. And we are very happy to recognize you, Representative Pond. Without objection, your statement will appear in the record n full.

TATEMENT OF PHYLLIS POND, STATE REPRESENTATIVE, INDIANA GENERAL ASSEMBLY

Ms. POND. Thank you, committee chairman and members of the ommittee. I am a State representative from Indiana and I am repesenting Indiana's 15th district, which encompasses parts of three ounties and includes the city of Fort Wayne. I appreciate having his opportunity to testify before you.

I am here on behalf of the General Assembly of Indiana and on ehalf of our State's 5½ million citizens. It is my pleasure to present o you a resolution which was recently adopted by both the Indiana House and Senate and which received widespread, bipartisan support.

It asks the U.S. Congress to give married persons the option of iling as singles, and I presume you have this on your desk at this time.

The laws of Indiana have traditionally supported and encouraged he institutions of marriage and the family. It is the policy of my ome State to enact laws which encourage stable and self-sufficient family units. For example, in 1979 we exempted all interspousal transfers from the Indiana inheritance tax.

Likewise, the Indiana courts have recognized that marriage is an institution "involving the highest interests of society * * *." This comnent to the preservation of the family, along with a basic sense of fairness, leads to our inability to support a Federal income tax system hat imposes higher tax rates on the incomes of a married working ouple than it does on the very same incomes of two persons who are not married.

We are often told that it would be very difficult to remove the marriage penalty in spite of the fact that there is a very simple way to lo it. The obvious solution would be to give married working couples the option of filing as singles if they wish. This option was just presented to us by the gentleman that testified previously from the U.S. Treasury Department.

This measure would have to be coupled with the provision that each individual should pay the tax on his or her own earnings so as to maintain uniformity between common law and community property states.

From 1913 until 1969, both married and single persons were able to use individual income tax rates. During this long period of time our Nation was able to finance enormous Government expansion and two world wars without imposing higher tax burdens on people just because they are married.

Since the Tax Reform Act of 1969, married persons have been prohibited from using the tax rates that single persons use. The marriage penalty was not mentioned in any of the congressional committee reports in 1969 and that provision was not debated on the floor of the House or the Senate. In fact, the marriage penalty was a provision of the Tax Reform Act that many Members of Congress were possibly not even aware of.

Nevertheless, it has been incredibly difficult to repeal. The single most important reason for this failure to repeal the marriage tax is that it would take money away from the Federal Treasury.

The present tax structure is neither fair nor equitable. For example, two persons who each have $10,000 in taxable income must pay $387 more tax because they are married than would the same two people filing as singles. In our inflationary times, this is a signficant difference.

I have gotten a great deal of mail on this matter and I assure you that my constituents are very concerned about it. I would like to read you just a few of the many comments I have received.

Here is one from Marion, Ind., and she says:

> After figuring our Federal taxes for 1978, again for the fifth consecutive year I am fighting mad. I feel it grossly unfair to penalize married persons. For 1978 alone we had to pay $820. Is this fair? We are strongly considering a divorce for tax purposes.

Here is one from Columbus, Ohio:

> My husband and myself have seriously discussed dissolving our marriage as we would be better off just living together.

Here is one from Richmond, Indiana:

> We have raised five children and I have always felt we had high morals. However, this situation certainly puts the seed of immoral living into our thoughts.

Our Government should should strive to establish a set of laws that commands the respect and obedience of our citizens. But a system of taxation that is unfair and contrary to traditional values of our people breeds disrespect and disobedience. In this case the law actually encourages divorce and discourages marriage and rends the very foundation of our society.

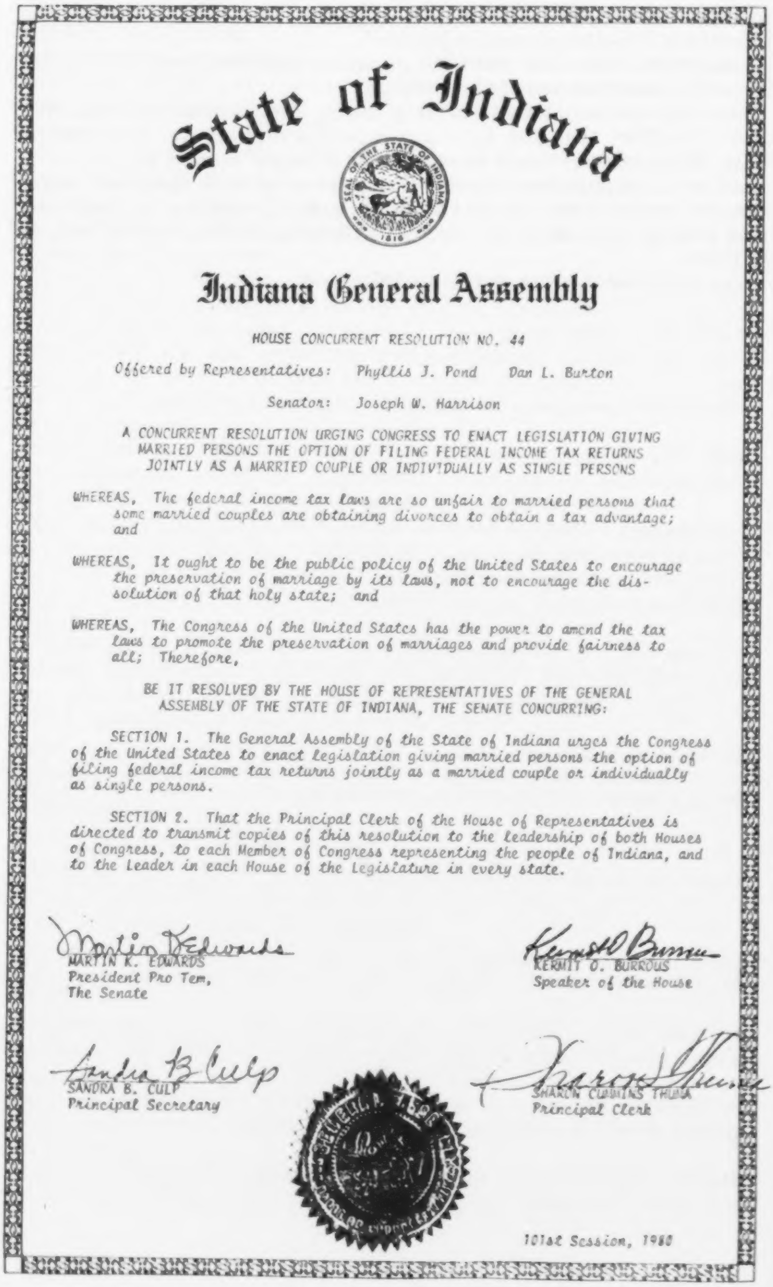
We of the State of Indiana ask that you repeal the marriage penalty and give our citizens a tax structure that makes sense and which does not discriminate solely an the basis of marital status. In a country that was founded on the principles of justice, fairness and equity, our present tax structure cannot be justified.

I appreciate the time you have given me and look forward to your favorable consideration of this proposal.

The CHAIRMAN. Thank you very much, Representative Pond. We know the effort that you have put into this matter over a period of years. We appreciate it. And we are very happy to hear you.

Let me announce that we are going to proceed with the panel members only until 12:30. At that time we will adjourn for an hour and come back at 1:30, at which time we will complete hearing the rest of the panel.

[An attachment to the statement follows:]



State of Indiana

Indiana General Assembly

HOUSE CONCURRENT RESOLUTION NO. 44

Offered by Representatives: Phyllis J. Pond Dan L. Burton

Senator: Joseph W. Harrison

A CONCURRENT RESOLUTION URGING CONGRESS TO ENACT LEGISLATION GIVING MARRIED PERSONS THE OPTION OF FILING FEDERAL INCOME TAX RETURNS JOINTLY AS A MARRIED COUPLE OR INDIVIDUALLY AS SINGLE PERSONS

WHEREAS, The federal income tax laws are so unfair to married persons that some married couples are obtaining divorces to obtain a tax advantage; and

WHEREAS, It ought to be the public policy of the United States to encourage the preservation of marriage by its laws, not to encourage the dissolution of that holy state; and

WHEREAS, The Congress of the United States has the power to amend the tax laws to promote the preservation of marriages and provide fairness to all; Therefore,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE GENERAL ASSEMBLY OF THE STATE OF INDIANA, THE SENATE CONCURRING:

SECTION 1. The General Assembly of the State of Indiana urges the Congress of the United States to enact legislation giving married persons the option of filing federal income tax returns jointly as a married couple or individually as single persons.

SECTION 2. That the Principal Clerk of the House of Representatives is directed to transmit copies of this resolution to the leadership of both Houses of Congress, to each Member of Congress representing the people of Indiana, and to the Leader in each House of the Legislature in every state.

Martin K Edwards
MARTIN K. EDWARDS
President Pro Tem,
The Senate

KERMIT O. BURROUS
Speaker of the House

Sandra B Culp
SANDRA B. CULP
Principal Secretary

SHARON CUMMINS THUMA
Principal Clerk

101st Session, 1980

Mr. Stark. Mr. Chairman.

The Chairman. Mr. Stark.

Mr. Stark. I wonder if you would yield to me for a brief question
Representative Pond.

The Chairman. Yes.

Mr. Stark. Were you present earlier when we discussed the list of
iorities as between married couples with one earner or two earners,
arried couples with children and so forth? Did you hear that
scussion?

Ms. Pond. Yes.

Mr. Stark. I wonder if you would be good enough, subsequent to
e hearings, to just write to us and outline what your priorities would
. That may be a choice we have to make. And give any comments
to why. It would be helpful to me and we are going to have to come
with that sooner or later.

Ms. Pond. Very good and I thought your list of priorities was ex-
llent. I heard the whole thing. For simplicity reasons the simplest
ing is to allow people the option of filing married or single at this
ne, right?

Mr. Stark. But it all has its dollar cost and at some point we are
ing to be faced with options. You cannot unfortunately please every-
dy. If we raise it for singles in effect we may have to lower it for
arried couples and vice versa. It is a teeter-totter and we cannot
t both ends in the air at the same time.

I think we are going to have to come to some conclusion as to what
merica feels the priorities are. And if you would address that to us.

The Chairman. We hope you will follow that up with
rrespondence.

[The following was subsequently received:]

State of Indiana,
House of Representatives,
New Haven, Ind., April 2, 1980.

on. Fortney H. Stark,
mmittee on Ways and Means, U.S. House of Representatives,
ashington, D.C.

Dear Congressman Stark: I very much appreciated the opportunity to testify
fore the Ways and Means Committee this morning. In response to your ques-
on about my priorities in a system of taxation I would have to agree that a list
priorities should be basic to a new and long range tax schedule.

As you listed your priorities: one earner with children, one earner without
ildren, two earners with children, and two earners without children. I would
ve to agree that my listing would be almost identical. Although this may be
eal, I do not think the Treasury Department or the Congress is ready to make
ch a sweeping approach.

I prefer to support such proposals as those introduced by Senator Mathias,
ongresswoman Fenwick, and Congressman Quayle to take care of the immediate
uation and work toward your goal in the near future.

As a Member of the Indiana General Assembly I have become aware that my
nstituents are very upset over the "marriage tax" inequity. You show a
nsitivity in this area of making the taxes as fair to all as possible and encour-
ing our government to encourage, not discourage, the raising of families.
ank you.

Sincerely,

Phyllis Pond,
State Representative.

The CHAIRMAN. We will hear now from Dr. Sydney Key.
I understand you will not be able to come back after lunch.

STATEMENT OF SYDNEY J. KEY, ECONOMIST, ON BEHALF OF THE ACTION GROUP ON THE MARRIAGE TAX PENALTY OF THE INTERDEPARTMENTAL TASK FORCE ON WOMEN

Ms. KEY. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am testifying on behalf of the Action Group on the Marriage Tax Penalty of the Interdepartmental Task Force on Women. The views I will present here today represent those of the action group only and not those of the administration.

To save time I will summarize my statement, but I would like to request that it be printed in the record in full.

The CHAIRMAN. Without objection, your statement and the supplemental materials will appear in the record in full, and without objection that will be true of all of the witnesses at the table.

You may proceed, Dr. Key.

Ms. KEY. There seems to be widespread agreement that the marriage tax penalty is a serious weakness in our income tax. The major factor that causes this penalty is the use of tax-rate schedules that differ according to marital status. Married taxpayers are not allowed to use the tax rate schedule for single individuals. Instead, they must either use the much higher rates of the schedule for marrieds filing separately, or they must aggregate their incomes and use the schedule for marrieds filing jointly.

Since the United States has a progressive tax system, aggregating the two incomes means that the second income is taxed at higher rates than the first. For most two-earner couples the effect of aggregation more than outweighs the fact that the schedule for marrieds filing jointly has the lowest rates.

The action group believes that there is an important constraint on removing the marriage tax on two-earner couples. Specifically, the taxes paid by a single person compared with a one-earner couple with the same income must not be increased. Under the progressive U.S. tax system there is only one way this can be accomplished—by making a distinction between one-earner and two-earner married couples.

At present married couples with the same total income pay the same tax regardless of by whom or in what proportions the income is earned. In economic terms, however, there is a distinction between a one-earner and a two-earner married couple with the same dollar income. The most important reason is that the dollar income of the one-earner couple does not include the quite considerable value of the homemaker's service. And it might be noted that compared with other industrial countries the United States is almost alone in adhering to the principle that only the total income and not who earns it matters.

The action group has concluded that there is no compelling reason for one-earner and two-earner couples with the same dollar income to pay the same tax, and that this principle should be eliminated from ie tax system. Without it, it is possible to have a progressive tax ystem that is neutral with respect to marriage.

There are several policy options for reducing or eliminating the arriage tax penalty. It is important to keep in mind that all of these ptions require making a distinction between one-earner and two-arner married couples.

One option is a deduction or credit for the second wage earner. The tion group urges the committee to reject this approach. It is unfair nd arbitrary, and it bears no relationship to the differences in the x rate schedules that cause the marriage penalty in the first place.

Another policy option is to tax every individual's own income on ie same rate schedule regardless of marital status. Although the acon group has concluded that this is the most comprehensive soluon to the whole problem of taxes and marital status, we recognize iat this is to sweeping a change for Congress to consider at this me.

As the result, the action group recommends that the committee iminate the marriage tax by allowing married two-earner couples ie option of being taxed as single individuals on each spouse's own icome. This proposal for optional individual taxation is contained bills introduced by Representative Fenwick and Senator Mathias. reduces the number of tax rate schedules from four to three by ollapsing the schedule for marrieds filing separately into the schedle for singles. As Mr. Sunley testified earlier, it is a "simple and raightforward way to eliminate the marriage penalty."

It should be emphasized that this proposal does not take away any f the benefits gained by singles compared with one-earner couples in ie Tax Reform Act of 1969.

Moreover, if desired, the married filing separately schedule could phased out gradually over a period of several years.

The allocation between spouses of deductible expenses and investent income does not present an insurmountable problem. Rules can established that would provide a reasonable and relatively simple isis for allocation. Furthermore, individual taxation does not require iat married two-earner couples file separate returns. The spouses uld use separate columns on the same form without aggregating eir incomes, a system used in a number of States.

In sum, the action group urges the committee to stop subjecting ore than 16 million two-earner couples, more than 32 million inviduals, to an irrational tax penalty.

We urge the committee to give married two-earner couples the ption of being taxed as single individuals—both as the best soluon to the problem of the marriage penalty and as the first step toward e eventual goal of individual taxation.

[The prepared statement follows:]

STATEMENT OF SYDNEY J. KEY, ECONOMIST, ON BEHALF OF THE ACTION GROUP ON THE MARRIAGE TAX PENALTY OF THE INTERDEPARTMENTAL TASK FORCE ON WOMEN

I am testifying on behalf of the Action Group on the Marriage Tax Penalty of the Interdepartmental Task Force on Women. The Task Force was created in 1978 by President Carter to examine policy issues that particularly affect women. The views I will present here today represent those of the Action Group and do not reflect the Administration's position. The September 1979 report of the Action Group is being submitted as an attachment to my testimony.

There seems to be widespread agreement that the marriage tax penalty on two-earner couples is a serious weakness in our income tax. Yet this penalty remains an integral part of the tax system. According to estimates by the staff of the Joint Committee on Taxation, 16 million two-earner couples -- 32 million individuals -- pay a marriage tax to the U.S. government. If the marriage tax penalty is not eliminated from our tax system, these numbers will continue to increase substantially, and the financial penalty of marriage for working couples will become increasingly onerous.

The marriage tax penalty is sometimes presented as a conflict between married taxpayers and single taxpayers. This view is incorrect because it does not distinguish between two very different types of married taxpayers. What is known as the marriage tax affects only two-earner married couples, that is, couples in which both husband and wife work. By contrast, the basic structure of our present tax laws provides a substantial subsidy to married one-earner couples at the expense of both single individuals and two-earner couples.

As a result, if a single working person marries someone with no income, marriage will lower the tax bill; this is a comparison frequently made by single taxpayers. But, if two single workers marry (and continue to work), their taxes will usually be higher as a result of their marriage. The difference between the total tax bill of two married workers and the total tax bill of the same two workers if they were single constitutes the marriage tax penalty.

The amount of the marriage tax penalty for a two-earner couple can vary greatly. As can be seen from the attached table, in general the dollar amount of the marriage tax penalty tends to increase both with the couple's total income and with the similarity of the two incomes. However, the incomes of the two spouses do not have to be equal for the couple to pay the marriage tax. A very rough rule-of-thumb is that two-earner couples pay a marriage tax when the spouse with the lower income earns one-fifth or more of the couple's total income. When the dissimilarity in the spouses' incomes is greater than this, the couple begins to resemble a one-earner couple and may enjoy the traditional tax benefits from marriage.

The major factor causing the marriage tax penalty is the use of tax rate schedules with both rates and zero bracket amounts that differ according to marital status. At present, there are four different tax rate schedules. From highest to lowest, they are the schedule for married persons filing separately, the schedule for single individuals, the schedule for unmarried heads-of-households, and the schedule for married couples filing jointly. Married two-earner couples must either use the high rates of the schedule for married persons filing separately or aggregate their incomes and use the schedule for married couples filing jointly. Since the United States has a progressive tax system (that is, the rate of tax increases as income increases), aggregating the two incomes means that the second income is taxed at higher rates than the first. For most two-earner couples the effect of aggregation more than outweighs the fact that the married-filing-jointly schedule has lower tax rates than the singles' schedule.

The Action Group believes that there is an important constraint on removing the marriage tax penalty on two-earner couples; specifically, the taxes on single individuals relative to one-earner couples with the same income (a difference that was reduced but not eliminated by the Tax Reform Act of 1969) must not be increased. Under the progressive U.S. tax system, there is only one way this can be accomplished; namely, by making a distinction between one-earner and two-earner married couples.

At present, married couples with the same total income pay the same tax regardless of by whom or in what proportions the income is earned. The incomes of the spouses are simply aggregated. In economic terms, however, there is a distinction between a one-earner couple and a two-earner couple with the same dollar income. The most important reason is that the dollar income of the one-earner couple does not include the quite considerable value of the homemaker's services in the home. And it might be noted that, compared with other industrial countries, the United States is almost alone in adhering to the principle that only the total income, and not who earns it, matters.

The Action Group has concluded that there is no compelling reason for one-earner and two-earner married couples with the same dollar income to pay the same tax, and believes that the principle of spousal aggregation of dollar income should be eliminated from the tax system of the United States. Without it, it is possible to have a progressive tax system that is neutral with respect to marriage.

Once this idea is accepted, there are several policy options for reducing or eliminating marriage tax penalty on two earner couples. It is important to note that all of these options require making a distinction between one- and two-earner couples with the same dollar income.

One policy option is a deduction or credit for the second wage earner. For example, deductions have been proposed that are equal to a fixed per cent of the earnings of the spouse with the lower income, subject to a specified maximum dollar amount. The Action Group urges the Committee to reject this approach because it is unfair and arbitrary; it bears no relationship to, and indeed perpetuates, the differences in the tax rate schedules that cause the marriage penalty in the first place.

Another policy option is to tax every individual's own income on the same rate schedule regardless of marital status (the pre-1948 situation) but (unlike pre-1948) without regard to whether there are community property laws in the individual's state of residence. The Action Group has concluded that this is the most comprehensive solution to the whole problem of taxes and marital status. The Action Group recognizes, however, that this is too sweeping a change for the Congress to consider at this time.

As a result, the Action Group recommends a two-stage approach to the problem of taxes and marital status. The first stage would consist of eliminating the marriage tax penalty by allowing married two-earner couples the option of being taxed on each spouse's own income on the tax rate schedule for single individuals (same zero bracket amount and same tax rates as a single person). This proposal for optional individual taxation, which is contained in bills introduced by Senator Mathias and Representative Fenwick, reduces the number of tax rate schedules from four to three by collapsing the schedule for married persons filing separately into the schedule for single individuals. A complete transition to individual taxation, an eventual second stage, would involve collapsing the three remaining tax rate schedules into one rate schedule. It should be emphasized that the first stage proposal for optional individual taxation for two-earner married couples does not take away any of the benefits gained by singles compared with one-earner couples in the Tax Reform Act of 1969.

The Action Group has concluded that the allocation between spouses of deductible expenses and investment income under a system of optional individual taxation does not present an insurmountable problem. As discussed in the attached report, rules can be established that would provide a reasonable and relatively simple basis for allocation. Furthermore, individual taxation does not require that married two-earner couples file two physically separate returns. The Action Group recommends that for administrative convenience and cost savings to both the Internal Revenue Service and the taxpayer, a two-earner married couple could file a "combined individual return," that is, the spouses could use separate columns on the same form without aggregating their incomes. A similar system is used in a number of states and in the District of Columbia.

In sum, the Action Group urges the Committee to stop subjecting more than 16 million married two-earner couples -- more than 32 million individuals -- to an irrational tax penalty. We urge the Committee to give married two-earner couples the option of being taxed on each spouse's own income on the tax rate schedule for single individuals -- both as the best solution to the problem of the marriage tax penalty and as the first step toward the eventual goal of individual taxation.

1979 TAX COST OF MARRIAGE*

For couples who have no dependents and no excess itemized deductions

Wife's Adjusted Gross Income

	5,000	10,000	15,000	20,000	25,000
5,000	202	208	150	-30	-219
10,000	208	391	535	579	609
15,000	150	535	903	1,166	1,459
20,000	-30	579	1,166	1,692	2,117
25,000	-219	609	1,459	2,117	2,674

*The shaded diagonal represents different income combinations amounting to a total income of $30,000. When each spouse earns half of this amount, that is, $15,000, the marriage tax penalty is $903. A couple with the same total income of $30,000 but where one spouse earns $20,000 and the other $10,000 would pay a lower marriage tax of $579. The marriage tax for a total income of $30,000 disappears entirely when one spouse earns about $6,000 and the other earns about $24,000. When the spouses' incomes are more divergent, as in the $5,000 and $25,000 example shown in the table, there is an actual tax benefit from marriage (represented by a negative number), in this case -$219.

REPORT OF THE ACTION GROUP ON THE MARRIAGE TAX PENALTY TO THE TAX SUBCOMMITTEE OF THE INTERDEPARTMENTAL TASK FORCE ON WOMEN

The Action Group on the Marriage Tax Penalty--Janet Hart (chairperson), Judith Bartnoff, Sydney Key, and Sam Sanchez--met at the Task Force office on May 22, 1979 and had a number of informal consultations thereafter.

This report consists of two parts: first, an explanation of the marriage tax penalty on two-earner couples; and second, the Action Group's recommended solution to the problem.

I. The Marriage Tax Penalty

The basic structure of our present federal income tax laws provides a substantial subsidy to married one-earner couples at the expense of both single individuals and married two-earner couples. Thus the common view that the marriage tax penalty represents a conflict between married taxpayers and single taxpayers is incorrect. The marriage tax penalty affects only two-earner married couples, that is, couples in which both husband and wife work. Such couples, which used to be the exception, have become the norm; at the present time, two-earner couples outnumber one-earner couples. The tax laws, however, still reflect the traditional view of the American family where the husband worked and the wife stayed at home. As a result, according to the most recent estimates, approximately 19 million two-earner couples--38 million individuals--pay a marriage tax to the U.S. government.

1/ Some of the material in this report was contained in "Let's Stop the Tax on Marriage," by Sydney J. Key, The Washington Post (Outlook), January 29, 1978, in Dr. Key's testimony "The Marriage Tax on Two-Earner Couples" before the House Ways and Means Committee on April 5, 1978, and in "The Marriage Tax" by Sam Sanchez, which appears in the Interim Report to the President by the Task Force on Sex Discrimination, Civil Rights Division, U.S. Department of Justice.

Under the present tax system married one-earner couples get the most favorable tax treatment, singles are in the middle, and, in general, married two-earner couples fare the worst. As a result, if a single working person marries someone with no income, marriage will lower the tax bill; this is a comparison frequently made by single taxpayers. But, if two single workers marry (and continue to work), their taxes will usually be higher as a result of their marriage. The difference between the tax bill of two married workers and the total tax bill of the same two workers if they were single constitutes the marriage tax penalty.

The amount of the marriage tax penalty for a two-earner couple can vary greatly. As can be seen from Table 1, in general the dollar amount of the marriage tax tends to increase both with the couple's total income and with the similarity of the two incomes. However, the incomes of the two spouses do not have to be equal for the couple to pay the marriage tax. A very rough rule-of-thumb is that two-earner couples pay a marriage tax when the spouse with the lower income earns one-fifth or more of the couple's total income. When the dissimilarity in the spouses' incomes is greater than this, the couple begins to resemble a one-earner couple and may enjoy the traditional tax benefits from marriage.

It is important to realize that, contrary to popular belief, the marriage tax penalty does not affect only the so-called "two lawyer" couple, that is, it does not affect only couples in high income brackets. According to a study by Peter Sailer, an Internal Revenue Service statistician, at least 13 million two-earner couples paid the marriage tax in 1974. Of these 13 million couples, 20 percent had

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2/ According to Mr. Sailer's calculations, 5 million two-earner couples enjoyed the traditional tax benefits from marriage and a joint return. For these latter couples, the spouses' contributions to family income were so dissimilar that the benefits from income splitting outweighed the factors causing the marriage tax. See Peter J. Sailer "Using Tax Returns to Study Wage and Taxpaying Patterns, 1969 and 1974," 1976 American Statistical Association Proceedings, Social Statistics Section, pp. 34-40.

Table 1

1979 TAX COST OF MARRIAGE*

For couples who have no dependents and no excess itemized deductions

Wife's Adjusted Gross Income

	5,000	10,000	15,000	20,000	25,000
5,000	202	208	150	-30	-219
10,000	208	391	535	579	609
15,000	150	535	903	1,166	1,459
20,000	-30	579	1,166	1,692	2,117
25,000	-219	609	1,459	2,117	2,674

*The shaded diagonal represents different income combinations amounting to a total income of $30,000. When each spouse earns half of this amount, that is, $15,000, the marriage tax penalty is $903. A couple with the same total income of $30,000 but where one spouse earns $20,000 and the other $10,000 would pay a lower marriage tax of $579. The marriage tax for a total income of $30,000 disappears entirely when one spouse earns about $6,000 and the other earns about $24,000. When the spouses' incomes are more divergent, as in the $5,000 and $25,000 example shown in the table, there is an actual tax benefit from marriage (represented by a negative number), in this case -$219.

combined incomes under $10,000; 54 percent had combined incomes in the $10,000 to $20,000 range; and 25 percent had combined incomes between $20,000 and $50,000. Considerably less than one percent of the couples paying the marriage tax had combined incomes of more than $50,000.

Mr. Sailer's study also showed that the vast majority of two-earner couples in lower income brackets paid the marriage tax, that is, they did not enjoy the traditional tax benefits from marriage and a joint return. For example, 83 percent of all two-earner couples with combined incomes under $10,000 paid the marriage tax in 1974; 70 percent of all two-earner couples with combined incomes between $10,000 and $20,000 paid the marriage tax; and 66 percent of all two-earner couples with combined incomes in the $20,000 to $50,000 range paid the marriage tax. By contrast, of those two-earner couples with combined incomes of $50,000 or more, 48 percent paid the marriage tax.

Moreover, while the dollar amount of the marriage tax may seem relatively small in lower income brackets, it may still represent an enormous increase in a couple's tax bill. For example, a couple earning $5,000 each, as shown in Table 1, would pay a marriage tax of $202; this amount represents a 40 percent increase over the couple's tax bill as two singles. For a couple earning $10,000 each, the increase is 17 percent; the increase is 24 percent for a couple earning $25,000 each.

The major factor causing the marriage tax is the use of tax rate schedules with both rates and zero bracket amounts that differ according to marital status. The tax rate schedules are used to compute one's tax bill on the basis of taxable income, that is, adjusted gross income minus personal exemptions and minus excess

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3/ Under 1979 tax law the amount of the personal exemption is $1,000 per person.

itemized deductions, if any. (The tax *tables* are mathematically derived from the tax rate schedules for the convenience of the taxpayer.) There are four different tax rate schedules. The highest rates are those in the schedule for marrieds-filing-separately; the next highest rates are in the singles' schedule; third, there is the unmarried heads-of-households schedule; and finally, there is the lowest rate schedule, the schedule for marrieds-filing-jointly. The singles' schedule was

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4/ Itemized deductions may be subtracted from adjusted gross income (AGI) only to the extent that they exceed the "floor" on itemized deductions, that is, only excess itemized deductions may be subtracted. The floors on itemized deductions are, at the present time, equal to the zero bracket amounts: $3,400 for a married couple and $2,300 for a single person, which amounts to a combined floor of $4,600 for two singles. The effect of the difference in floors on the marriage tax penalty depends on the amount of itemized deductions and their division between spouses. At one extreme, two married taxpayers could subtact $1,200 more of their itemized deductions from their AGI than if they were single; their marriage tax penalty would be reduced somewhat but by no means eliminated. At the other extreme, which occurs when only one spouse has deductible expenses, the effect of the different floors is to increase the marriage tax penalty. See Walter Stromquist "Federal Income Tax Treatment of Married and Single Taxpayers," *Tax Notes*, June 11, 1979, p. 735.

5/ The married-filing-jointly schedule incorporates the idea of *income splitting*, the source of the tax subsidy for one-earner couples. A married couple filing *jointly* with a total taxable income of $13,000 (which corresponds to an AGI of $15,000 with no excess itemized deductions) is taxed as if they were using the married-filing-*separately* schedule to compute taxes on two taxable incomes of $6,500 each, regardless of how the income is in fact divided between husband and wife. This can result in a considerable tax savings, because the United States has a progressive federal income tax. In other words, since the rate of tax increases as income increases, the tax on the second $6,500 of a total taxable income of $13,000 is greater than the tax on the first $6,500. When a married *one-earner* couple with a taxable income of $13,000 implicitly splits their income by using the married-filing-*jointly* schedule, both halves of their income are taxed at the low rate applicable to the first $6,500. (Rather than going to the trouble of calculating the taxes on the two $6,500 halves and then adding them up, taxpayers can simply look up the tax for a taxable income of $13,000 on the schedule for marrieds-filing-*jointly*, which has the income splitting calculation built in.) For a one-earner couple with a taxable income of $13,000, the tax savings from income splitting is about $840. On the other hand, a husband and wife with identical incomes gain no benefit from income splitting, since their incomes are in fact divided equally; thus the tax for their total taxable income on the schedule for marrieds-filing-jointly is the same as the sum of their taxes on each individual income on the schedule for marrieds-filing-separately.

reated by the Tax Reform Act of 1969 in order to reduce somewhat the taxes paid y a single person relative to a one-earner couple with the same income. Until this chedule went into effect, singles had to use the high rates of the schedule for narrieds-filing-separately. Married two-earner couples, however, still must use ither the high rates of the schedule for marrieds-filing-separately or aggregate heir incomes and use the schedule for marrieds-filing-jointly. Since the U.S. has progressive tax system, that is, the rate of tax increases as income increases, ggregating the two incomes results in the second income being taxed at higher ates than the first.

In addition to the rates *per se*, the zero bracket amounts, that is, the amounts f income subject to a zero rate of tax, differ according to marital status. These mounts are $3,400 for a married couple and $2,300 for each single person. Thus ven when both spouses work, a married couple has a zero bracket amount of 3,400, which is $1,200 less than the total zero bracket income for two single wage arners, $4,600.

The dependence of a person's actual tax bill on his or her marital status and, f married, on whether his or her spouse works, can be illustrated by the four possble tax bills a person earning $15,000[6] might have to pay:

1) $1,635 if married to a non-working spouse;
2) $2,236 if an unmarried head-of-household;[7]
3) $2,345 if single; or,

/ The calculations assume that there are no dependents and no excess itemized deductions and that each spouse pays taxes in proportion to his or her share of total earnings.

/ Most people using the heads-of-households schedule would have at least one dependent; this calculation, based on the assumption of no dependents, is hypothetical only. Introducing dependents into all of the calculations would not, however, change the relative tax bills of the different categories of taxpayers.

4) $2,796.50 if married to a working spouse with the same income.

The marriage tax of a two-earner couple each earning $15,000 that was shown in Table 1 can, of course, be derived from these figures. It is simply the difference between their actual tax bill (2 x $2,796.50 or $5,593) and their tax bill as two singles (2 x $2,345, or $4,690), which amounts to $903. Clearly the present tax laws provide an incentive for two wage earners not to marry, and for two married wage earners to divorce and continue living together; it is, however, impossible to measure the effects of this incentive.

Another question raised by the heavy tax burden on two-earner couples is the incentive provided for a non-working wife to remain at home rather than enter the active labor force. The amounts involved can be illustrated by examining the change in the couple's overall financial status as a result of the wife's new income. The entrance of a married women into the active labor force (assuming her husband is also employed) results in a dramatic increase in taxes. From the calculations above it can be seen that when the couple lives on the husband's $15,000 salary, he will pay $1,635 in taxes each year. If, however, the wife begins to work at a salary of $15,000, their taxes will increase to $5,593. (The wife's additional salary of $15,000 results in an additional tax of $3,958.) Thus doubling the couple's income multiplies their tax bill by a factor of 3.4. This result occurs because of aggregation of the spouses' incomes, which means that the first dollar of the wife's income is taxed at her husband's marginal rate of tax, that is, at the tax rate on her husband's highest dollar of income. If the husband earned $10,000 and the wife took a job also earning $10,000, once again doubling their income, the impact on

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8/ If incomes are equal between spouses, it generally makes no difference whether the rate schedule for marrieds-filing-separately or the schedule for marrieds-filing-jointly is used. If incomes are unequal, it is almost always advantageous to use the rate schedule for marrieds-filing-jointly.

the couple's total tax bill would be even greater--the tax bill would quadruple, ncreasing from $702 to $2,745. It is, of course, extremely difficult to ascertain to what extent the tax system keeps non-working wives out of the labor force, but it certainly provides an incentive for them to stay at home.

II. Recommended Solution

There is an important constraint on removing the marriage tax penalty on two-earner couples; specifically, the taxes on singles relative to one-earner couples with the same income (a difference that was reduced but not eliminated by the Tax Reform Act of 1969) must not be increased. Under the progressive U.S. tax system, there is only one way this can be accomplished; namely, by making a distinction between one-earner and two-earner married couples.

At present, married couples with the same total income pay the same tax regardless of by whom or in what proportions the income is earned. The incomes of the spouses are simply aggregated. In economic terms, however, there is a distinction between a one-earner couple and a two-earner couple with the same total dollar income. The most important reason is that the dollar income of the one-earner couple does not include the quite considerable value of the homemaker's services in the home. And it might be noted that, compared with other industrial countries, the United States is almost alone in adhering to the principle that only the total income, and not who earns it, matters.

The Action Group has concluded that there is no compelling reason for one-earner and two-earner married couples with the same dollar income to pay the same tax, and believes that this principle of spousal aggregation of dollar income should not be taken as a given in the tax system of the United States. Without it, it is possible to have a progressive tax system that is neutral with respect to marriage. In other words, it is possible to have a progressive tax system that has both no penalty for marriage (no difference between the taxes paid by two married wage-earners and two single taxpayers with same individual incomes) and no penalty for remaining single (no difference between the taxes paid by a single wage earner and a wage earner with the same income married to a non-working spouse).

Once this idea is accepted, there are several policy options for removing the marriage tax penalty on two-earner couples.

The Action Group has concluded that the best solution would be to tax every individual's own income on the same rate schedule (same tax rates, same zero bracket amounts) regardless of marital status. This solution would be similar to the situation that existed under pre-1948 tax law in the United States, but with the critical difference that, unlike pre-1948, an individual's own income would, for Federal income tax purposes, be determined without regard to State community

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9/ The history of the Federal income tax as it relates to these principles is discussed in detail in Stromquist, supra note 4, pp. 731-734.

10/ It is assumed that, as at present, the floor on itemized deductions would equal the zero bracket amount and thus be the same for every individual taxpayer. If the floor on itemized deductions should in future be "cut loose" from the zero bracket amount, the Action Group would recommend that the new floor on itemized deductions be the same for every individual taxpayer, that is, it should not be dependent on marital status.

property laws.[11] It is generally agreed that Congress has the authority to legislate such a provision. Under the proposed system of one tax rate schedule applicable to every individual's own income, family responsibilities could be accomodated through the use of extra dependency deductions.

Under any system involving individual taxation of each spouse's own income, there would have to be some means for allocating income other than personal service income between spouses, and also for dividing deductions between spouses. The Action Group recommends that title should be the determining factor for allocating income and deductible expenses arising from the ownership of property. If property is jointly owned or deductible expenses are incurred jointly, there should be a presumption that the income or expense is split 50/50; however, it should be possible for the taxpayers to demonstrate that a different allocation should be allowed. For example, if contributions to the purchase of a piece of income producing property were split 75/25, the income and associated deductions could be allocated accordingly. For deductible expenses that do not arise from the ownership of property, the Action Group recommends that expenses attributable to one specific person (e.g., state income taxes, direct medical costs) be deducted by that spouse and that other deductible expenses either be split evenly or be allocated in proportion to income.[12]

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[11] A major problem in the pre-1948 system and, indeed, a major reason for the change to joint taxation with income splitting, was the decision of the U.S. Supreme Court in Poe v. Seaborn, 282 U.S. 101 (1930), which held that married residents of community property states could split their incomes for federal tax purposes. (Under community property rules, half of any married person's income belongs, in effect, to the spouse.) The Court's decision obviously gave married one-earner couples in community property states a great advantage over those in common law states, with the result that a number of states began adopting community property laws solely to give their citizens this benefit on their federal income tax returns. After passage of the Income Tax Act of 1948, which extended the benefits of income splitting to married couples everywhere, these states returned to their former common law status. The Seaborn decision was, however, based on the legislatively enacted Internal Revenue Code and not on the Constitution, which means that Congress could change the federal income tax law so that each individual would be taxed on his or her own income for federal purposes, without regard to the property laws of the state in which he or she resides. In Fernandez v. Wiener, 326 U.S. 340 (1945), the Supreme Court held that the federal tax definition of property could supersede the state definition for federal tax purposes.

[12] A similar procedure could be followed for exemptions for dependents.

The Action Group recognizes that this suggested scheme for property allocation might give couples some leeway for tax planning. However, the Group considers this scheme to be far superior to the current system, under which many couples enjoy the benefits of income-splitting without being required to pay the concomitant costs of transferring title from one spouse to another. This system has, in practice, operated to allow men to retain title to property while, at the same time, "splitting" the income from such property with their wives for tax purposes; this was one of the clear disadvantages to women of the introduction of joint returns and income splitting into the tax system.

Taxation of each spouse's "own" income as an individual does not mean that every married couple would have to file two physically separate returns. The Action Group recommends that for administrative convenience and cost savings both to the Internal Revenue Service and to the taxpayer, married individuals use the same return (hereinafter a "combined individual return"13/) even though the spouses would not aggregate their incomes. The tax would be computed separately on each income without reference to the income of the other. (A similar procedure is used in the District of Columbia, where married persons calculate their taxable incomes and tax bills separately in separate columns on the same return.14/)

The solution of taxing every individual's own income on the same rate schedule does entail problems of revenue loss and political feasibility. In effect, this proposal collapses the present four tax rate schedules into one tax rate schedule to be used by every individual regardless of marital status. If this new tax rate schedule were to be the present schedule for marrieds-filing-jointly, the lowest of the four existing tax rate schedules (as repeatedly proposed, to no avail, by former

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13/ The term "joint return" should be avoided, since it has become associated with concepts of spousal aggregation of income and income splitting.

14/ The standard deduction in the District of Columbia does, however, depend on marital status. See p.6 above regarding zero bracket amounts.

Representative Edward Koch, now mayor of New York), the resulting loss of tax revenues would be substantial; $25 billion has been suggested as a rough order-of-magnitude estimate. In general terms, this proposal would not change taxes for one-earner couples but would lower taxes for everyone else --unmarried heads-of-households, singles and two-earner couples. If, however, tax revenues were to be preserved by using a new schedule with rates higher than those of the present schedule for marrieds-filing-jointly (for example, the present schedule for heads-of-households or the present schedule for singles), tax rates for one-earner couples would be raised, a political impossibility.

The Action Group believes the most realistic and politically feasible method of achieving the goal of individual taxation would be a two-stage approach. The first stage would consist of allowing married two-earner couples the option of being taxed on each spouse's own income on the tax rate schedule for singles (same zero bracket amount and same tax rate as a single person). As described above, the spouses would file a "combined individual return" with the tax on each spouse's own income computed using the singles' tax rate schedule. This first stage proposal is, in fact, contained in bills now pending in the House (H.R. 3609, introduced by Representative Fenwick and 158 co-sponsors) and in the Senate (S.336, introduced by Senator Mathias and 4 co-sponsors). It should be emphasized that this proposal does not take away any of the benefits gained by singles compared with one-earner

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15/ In such a first stage approach, allowing two-earner couples to file as singles should be at the option of the couple; at this first stage there is no reason to remove the tax benefit from marriage for two-earner couples where spouses have widely divergent incomes. It would be relatively easy to have the tax form instructions contain a table showing, for various total income ranges, the income splits at which a two-earner couple would benefit from exercising the option of being taxed as singles. Couples with large excess itemized deductions and/or couples with income splits near the borderline would probably want to calculate their tax bills both ways; the potential tax savings would clearly be worth the extra calculations involved.

couples in the Tax Reform Act of 1969. Moreover, if this first stage proposal were adopted, since two-earner couples would always have the option of being taxed as single individuals on each spouse's own income, the interests of single and two-earner couples would be identical in effecting the second stage of the transition to individual taxation. The first stage proposal, that is, the Fenwick and Mathias bills, in effect reduces the number of tax rate schedules from four to three by collapsing the schedule for marrieds-filing-separately into the schedule for single individuals. Revenue estimates for the first stage proposal range from $5 to $9 billion, considerably less than the revenue loss from a complete switch to one tax rate schedule using the present schedule for marrieds-filing-jointly. In any event, it is important to keep in mind that the revenue estimates also indicate the seriousness of the problem: the U.S. government is collecting $5 to $9 billion in extra taxes from about 19 million two-earner couples -- 38 million individuals -- simply because they are married rather than living together without being legally married. Thus the Fenwick-Mathias proposal is a critical first step toward the eventual goal of individual taxation with one rate schedule regardless of marital status.

The second stage in achieving the final goal would be to reduce the three remaining tax rate schedules to one tax rate schedule. If, at that time, policy-makers were to choose to make any additional adjustment for one-earner couples or for heads-of-households, the means of doing so should be the personal exemption, not tax rate schedules based on marital status or spousal aggregation of income. As a practical matter, the one tax rate schedule would be the same as the present schedule for marrieds-filing-jointly, that is, the lowest of the existing tax rate schedules. This would mean a substantial additional revenue loss, which suggests that the two remaining higher rate schedules should be lowered steadily according to a fixed timetable. The gradual alteration of the rate schedules could be carried out as part of the tax reductions Congress enacts almost every year.

Finally, the Action Group would like to indicate why it has ignored the all-too-frequently mentioned policy option of a deduction or credit for the second wage earner. Such credits or deductions are usually equal to a fixed percent of the earnings of the spouse with the lower income, subject to a specified maximum dollar amount. (One example of this approach is contained a bill introduced by Senator Gravel, S. 1247.) The Action Group has rejected the idea of a deduction or credit for the second wage earner as unfair and arbitrary. It bears no relationship to, and indeed perpetuates, the differences in tax rate schedules according to marital status that cause the marriage tax penalty in the first place.

16/ It would, of course, be mathematically possible to devise a credit based on each spouse's own income and deductions that would equal the exact amount of the marriage tax for each two-earner couple. Such a credit would produce the same result as the first stage proposal discussed on pp. 12-13 above. However, such a credit would be an unnecessarily complicated way to eliminate the marriage tax penalty. By contrast, the first stage proposal, that is, giving married two-earner couples the option of being taxed as singles on each spouses own income, is much simpler; moreover, not only would it eliminate the marriage tax penalty but also it would reduce the number of tax rate schedules from four to three.

The Chairman. Thank you very much.

Are there any questions?

Mr. Stark. Yes, Mr. Chairman. Thank you.

I guess I want to ask you the same question, and I think you might have some difference with the priority list that I mentioned earlier.

I don't know whether you heard it. I am not submitting it as my own but as a suggested list that has some basis in our national culture as to why we should or shouldn't recognize one group over another. I had them ranked as one-earner couples with children as the highest priority, and then one-earner couples without children as the next highest recognizing—my theory there was, while we have a shortage of jobs, the people who elect to stay out of the job market might be treated with preference to people who elect to take two jobs as a couple.

People may disagree with that. Then two-earner couples with children and two-earner couples without children, and two single individuals either living together or married where the marriage is not recognized in the community or State for one reason or another might be an alternative.

If we had a list, it would be that easy for us and if a plebiscite would occur in that order, it would be a lot easier for us than to work on legislation and a tax structure which would give preference to those.

If you would care to comment later or just in writing, I would be curious to know, if that isn't your list, then what would be. In every instance we may come to a case where you have to choose one over another. So I can see no way mathematically that we can come out without having to make that decision somewhere down the line to take away a preference that is already enjoyed by one group and give it to another.

And if you could submit for us later——

Mr. Conable. Would the gentleman yield?

I think he will acknowledge that there are problems of priority among different income levels also. When you have two-worker couples making a $40,000 total, the situation is quite different than when you have two-worker couples making an $8,000 total. The priorities change a good deal among these groups at different income levels and thus complicate the problem of stating priorities.

Mr. Stark. I think in response to the gentleman: That our tax structure already has a priority system that deals with the very low income people as opposed to high.

The progressive system already dictates that we will favor those people with lower incomes in terms of the percentage that they pay. I agree that we won't have a perfect system, but without the committee working at some kind of a priority schedule, we won't ever come to an empirical solution, and that is what we have to come up with.

The philosophic part of this—my sympathies may be far from the list I suggested as a discussion list, but in the end result we come out with a table which is very empirical and does not, in fact, take into account mores or traditions or religions or anything else.

That is why we somehow have to start with a pecking order. I would appreciate Dr. Key's comment or submitting something later.

Ms. KEY. For now let me say that I have problems with the concept of your approach. You are trying to set priorities in terms of marital status and in terms of incentives for labor market participation. I would prefer to look at the tax system in terms of neutrality and what kind of neutrality is most important.

Mr. STARK. I would agree with you, Doctor, wholeheartedly. The problem is that it is now new. This happens every tax reform where you have built into the code at present an advantage for one group of people. To move to neutrality means to increase their burden relative to another group. Politically, I would say that is impossible, so we have to recognize that if we are going to help one group, then it is at the disadvantage of another because we already have inequalities built in. Yes, sir, if we could erase it all and start from scratch, I could philosophically agree with you, but we can't.

Ms. KEY. That is why we suggest this gradual approach. I think the basic issue is that we see the ultimate goal as neutrality among individuals regardless of their marital status or living arrangements. We think that is much more important that the concept of neutrality among married couples that we have in the tax system right now. We recognize that you can't go from where we are now to a system of neutrality among individuals in one step.

Mr. STARK. I would rather take on the oil companies, thank you. It would be an easier and more pleasant task than trying to make neutral the income splitting provisions for one-earner couples right now. That is my political observation, not necessarily my conviction.

The CHAIRMAN. The committee will come back at 1:30, at which time we will hear the rest of the panel.

Thank you very much.

[Whereupon, at 12:30 p.m. the committee was recessed, to reconvene at 1:30 p.m.]

AFTERNOON SESSION

Mr. CORMAN [presiding]. The committee will resume its hearing. Would the next witness be Mr. Smith?

Mr. SMITH. Yes, sir.

Mr. CORMAN. You may proceed.

STATEMENT OF RALPH E. SMITH, ACTING DIRECTOR, NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Mr. SMITH. Thank you, Mr. Chairman.

I appreciate this opportunity to appear before you this afternoon. I am the Acting Director of the National Commission for Employment Policy.

I have two purposes in being here today. One is to emphasize the need to remove the marriage penalty that was discussed in the morning part of the hearing, and the second is to suggest that optional individual filing would be a reasonable way of doing so.

I have conducted a considerable amount of research on the causes and consequences of women's movement into the labor force, and I would like to discuss some of my findings today.

In one generation the labor force participation of married women moved from being a rarity, about one in five married women being in the work force, to a very commen event. Today more than half of married women are in the work force.

My research strongly suggests that this expansion of married women into the work force is far from over. Most of the economic, demographic, and attitudinal factors that have been responsible for women's choosing to come into the work force in the past will continue to be operative throughout the next decade and beyond. As long as job opportunities for women and the real wages associated with those opportunities continue to increase, more women will choose to be in the work force.

As long as attitudes concerning proper roles for women continue to liberalize, more women will come into the work force.

My projection—obviously subject to a good deal of error as are any forecasts these days—is that we are going to move from a point in which a bit over half of all married women under the age of 55 are in the labor force to something approaching two-thirds by the end of the decade.

More significant for today's hearing is that most of the anticipated growth in the female labor force will be concentrated in the same age group in which husbands normally work, so that this movement of women into the work force will be directly translated into a continued increase in the number of families with two earners.

Associated with this increase will be a continuing increase in the number of families that will incur a marriage penalty.

As has been amply described this morning, that marriage penalty has introduced inequities into the tax system and it places this committee in the rather uncomfortable position of providing some couples with an incentive not to marry, other couples who are married with the incentive to divorce, and a disincentive for many wives to work outside the home.

Presently the tax system is tilted in favor of the so-called traditional family, a stereotype that is declining in its representativeness year after year. I would favor maving toward a tax system which is neutral with respect to the labor force behavior of wives. I believe that optional individual filing is preferable to the current system precisely because it would do so.

Finally let me conclude by saying that I believe that optional individual filing would also be preferable to simply abolishing the joint return altogether and having mandatory individual filing.

I feel this way because we will continue to be in a situation at least through the next decade in which a substantial minority of married women are going to be full-time homemakers. I think it would be unfair to them to make an abrupt change in the tax system that would penalize them for decisions that were made at a time in which the tax system favored full-time homemakers.

I would be happy to try to answer your questions.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF RALPH E. SMITH, ON BEHALF OF THE NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Thank you for providing me this opportunity to participate in these hearings on legislative proposals related to the comparative income tax treatment of married couples, single persons, and heads of households. I am the Acting

Director of the National Commission for Employment Policy, a federal advisory commission established under Title V of the Comprehensive Employment and Training Act to advise the President and the Congress on national employment and training issues. At its December 1979 meeting, the members of the Commission designated the problems facing women in the labor market as one of its two priority agenda items for 1980. The "marriage penalty" in the personal income tax system is one of the problems faced by many wives who work outside the home. The Commission has not taken a position on this issue and my statement does not necessarily reflect the views of its members.

The purpose of my testimony is to underscore the need for Congress to act to remove the marriage penalty from the system and to suggest that optional individual filing would be a reasonable method of doing so. The first part of my statement discusses the dramatic and continuing movement of women into the labor force which has made the tax treatment of two-earner couples a major issue. The second part discusses the tax issue itself.

The movement of women into the labor force[1]

Within the span of barely a generation, our society has moved from one in which married women for the most part stayed home to one in which it is quite common for married women to work for pay outside the home. In 1947, only 20 percent of all married women were in the labor force. Presently, over 50 percent are in the labor force.

The cause of this dramatic change are varied and complex. Economists, including myself, who have investigated this phenomenon consider the long-term growth in real wages and job opportunities for women to be the major source of the expansion. As the rewards for being in the paid labor force have increased, more women have shifted part of their work activity into the marketplace. The "opportunity cost" of staying at home all day has become too great for an increasing proportion of women.

In addition, the decline in the birth rate since the mid-1960s has contributed to more recent labor growth. All else equal, women with no children living at home are most likely to be in the labor force; those with school-age children are next most likely; and those with very young children are least likely. The decline in the proportion of families with young children has been both a cause and an effect of the movement of women into the labor force.

Finally, increasing acceptance of nontraditional, and especially nonfamilial, roles for women has also been a source of labor force growth in recent years. Sociologists have assembled convincing evidence that an increasing proportion of women believe that work outside the home is compatible with other roles and that this attitudinal change is related to the growth in the female labor force. Again, causation is difficult to disentangle. Nonetheless, it seems likely that, whatever the original reason, the result of this attitudinal change will be either to increase the perceived benefit of being in the labor force or to decrease the perceived benefit of staying at home.

The result of these and other sources of women's movement into the labor force is that more than 55 percent of married women under the age of 55 are now in the labor force, a percentage that has been increasing in nearly every year since World War II.

Based on an extensive analysis of the determinants of future labor force growth, I believe that the participation of women, including married women, in the paid labor market will continue to increase. My best estimate is that, even under fairly conservative assumptions, nearly one million women will be added to the labor force each year throughout this decade. Most relevant to today's hearings, I anticipate that nearly all of this increase will be among married women between the ages of twenty-five and fifty-four, an age group in which most husbands are already in the labor force. As shown in the accompanying table, these projections, if they come about, would have almost 67 percent of all married women under the age of 55 participating in the labor force, compared with only 55 percent in 1978.

This set of projections is based on the expectation that most of the economic, demographic, and attitudinal factors that have contributed to the rapid expansion of the female labor force in the post-War period will continue to propel women into the labor market and encourage them to remain there. As long as married women continue to be attracted to the labor force by improved labor market opportunities, anticipated growth in the economy over the next decade should be an important positive factor. Will women continue to share in the job opportunities that are created by economic growth? There are several reasons to expect that they will. First, the job outlook in the white-collar and service sector occupations (except for teachers) looks particularly good. Second, continued enforcement of equal opportunity laws should open opportunities in other fields, such as the skilled trades, that have long been male preserves. Third, the educational level of the adult female population is expected to continue to increase in various fields including law and medicine, which offer particularly large rewards. Fourth, women are developing increased work experience which, by itself, may pay off in higher wages, promotion opportunities, and seniority rights.

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[1] This discussion is taken in part from the introductory chapter of Ralph E. Smith, editor, The Subtle Revolution: Women at Work (Washington: The Urban Institute, 1979).

PROJECTIONS OF THE FEMALE LABOR FORCE IN 1990

	Population (thousands)			Labor force (thousands)			Participation rate (percent)		
	Actual 1978 (March)	Projected 1990	Projected change	Actual 1978 (March)	Projected 1990	Projected change	Actual 1978 (March)	Projected 1990	Projected change
Total, ages 16 and over	83, 374	94, 690	11, 316	40, 971	51, 890	10, 918	49. 1	54. 8	5. 7
Ages 16–24	18, 277	15, 535	−2, 742	10, 580	10, 420	−160	57. 9	67. 1	9. 2
Ages 25–24	41, 059	52, 023	10, 964	24, 790	35, 706	10, 916	60. 4	68. 6	8. 2
Ages 55 and over	24, 038	27, 132	3, 094	5, 601	5, 764	163	23. 3	21. 2	−2. 1
Total, ages 16–54	59, 336	67, 558	8, 222	35, 370	46, 126	10, 756	59. 6	68. 3	8. 7
Never married	15, 544	13, 757	−1, 787	9, 763	9, 464	−299	62. 8	68. 8	6. 0
Married, husband present	35, 802	44, 390	8, 588	19, 842	29, 600	9, 758	55. 4	66. 7	11. 3
No children under age 18	11, 439	12, 942	1, 503	7, 549	9, 561	2, 012	66. 0	73. 9	7. 9
Children ages 6 to 17 only	13, 231	17, 859	4, 628	7, 661	12, 520	4, 859	57. 9	70. 1	12. 2
Children under age 6	11, 132	13, 589	2, 457	4, 633	7, 519	2, 886	41. 6	55. 3	13. 7
Other never married	7, 989	9, 410	1, 421	5, 764	7, 062	1, 298	72. 1	75. 0	2. 9
No children under age 18	3, 433	3, 740	307	2, 639	3, 063	424	76. 9	81. 9	5. 0
Children ages 6 to 17 only	3, 042	3, 882	840	2, 216	2, 865	649	72. 8	73. 8	1. 0
Children under age 6	1, 515	1, 788	273	908	1, 134	226	60. 0	63. 4	3. 4

In addition to the economic reasons, the role of attitudes should not be ignored. The women who will be between the ages of twenty and sixty-four in the year 1990 are now between the ages of ten and fifty-four. There is considerable evidence that younger women's attitudes toward the role of women in the labor market are more liberal than are those of older women. Even if no individual woman's attitude changed any further, just the replacement of the less liberal older women with the younger ones over time will itself result in a working-age population more oriented toward the labor market.

Another factor that may be decisive for many women is the momentum built up as more and more women participate in the labor force. As women who do not work outside the home become a minority, keeping up with the Joneses will increasingly require Ms. Smith to enter the labor force. A family's place in the income distribution used to depend almost exclusively on the earnings of the husband. Now, even if the husband has above-average wages, the family could have below-average income if the wife stays home. Moreover, the full-time homemaker is finding that her occupation is becoming atypical.

My projections do not suggest a sharp break with recent history. Nonetheless, when added to the changes in labor force patterns that have occurred during the past few decades, they depict a dramatic departure from the prevailing picture of what American women are doing. If these projections are accurate, by the end of the decade, two-thirds of all married women under the age of fifty-five will be in the labor force, including more than half of the mothers with young children. Even though the number of married women in this age group is expected to increase from 35.8 million in 1978 to 44.4 million in 1990, the number staying home with children under age eighteen is not expected to grow. The stereotype of a wife who stays home to look after her children will therefore fit only one-quarter of the 44.4 million women under age fifty-five who are expected to be married in 1990.

that virtually all of the projected labor force increase is in the age group
five through fifty-four. This pattern is due mainly to the aging of the
orld War II babies who, by 1990, will be in their prime working years.
ve percent of the female population age sixteen and over will be in the
five to fifty-four age group, compared with 49 percent in 1978. The
e number of women ages sixteen to twenty-four will fall; even with a
ed nine percentage-point increase in their participation rate, the number
g women in the labor force in 1990 will be virtually the same as in 1978.
too, that married women are expected to account for a larger proportion
emale population and a larger proportion of the female labor force in 1990
ey did in 1978. The change in the age distribution will account for the
velopment, while the same reason plus the projected continued growth
en's labor force participation rate will account for the latter.

treatment of two-earner couples

ciated with the continuing movement of married women into the labor
ill be a continuing increase in the number of families that will incur a
ge penalty." Here I am using the term, "marriage penalty," to denote
ied tax that many couples pay if two individuals who work choose to
The amount of this added tax can be quite large, even in the middle-
brackets. Aside from the equity issues raised by this, there is the very
al matter that it puts the government in the awkward position of providing
centive to marry, an incentive to divorce, and a disincentive for wives to
id employment.

as estimated in our book that in 1976 approximately one-quarter of all
ing couples paid more taxes because they were married. If the labor
rojections presented above are correct, there will be a substantial increase
number of couples facing a marriage penalty over the next decade. It was
ed that in 1990 37 percent of all tax-paying couples would incur a penalty.
3609, introduced by Representative Fenwick, would eliminate the penalty
wing married couples the option of being taxed as if they were single.
witnesses appearing before you today and tomorrow, I believe, will be
ing the legal and administrative issues that are involved in moving from
sent system to the proposed one. What I would like to stress is the growing
nce of resolving the marriage penalty problem.

personal income tax system today is titled in favor of the "traditional"
in which the wife stays home. This stereotypical family represents a
maller percentage of the population than it did even a few years ago and
even less typical in the years to come. I believe it is time for Congress to
his issue.

of the chapters in the previously-cited book on the consequences of the
ent of women into the labor force focused on the marriage penalty issue
ernative ways of resolving it. We concluded that the most promising way
be to permit, but not require, married couples to file as single persons—
. 3609 provides. I believe that optional individual filing is superior to the
system because it would eliminate the marriage penalty and move the
tem toward a neutral policy regarding the labor force behavior of wives.
e that optional individual filing is preferable to abolishing the joint tax
entirely because it would not unduly penalize one-earner families for labor
ecisions that were made under the present system. There are still many
s, albeit a minority, in which the wife does not work outside the home.
ng couples with a choice has much to recommend it.

Corman. Thank you.

will take all of the panelists and then get to the questions.

O'Neill, you may proceed.

STATEMENT OF JUNE O'NEILL, WASHINGTON, D.C.

O'Neill. Mr. Chairman and members of the committee, my
is June O'Neill. I am an economist and the director of the pro-
of research on women and family policy at the Urban Institute
shington, D.C. I am appearing today, however, in an individual
ty and the views that I am expressing are solely my own and

are not necessarily the views of the Urban Institute or its sponsors.

The current tax treatment of families and single persons has been criticized as creating a disincentive to paid employment, particularly for women who choose to marry; and a disincentive to marry, for couples in which both the man and the woman choose to work. In addition, it may have undesirable effects on the way real disposable income is distributed among families and individuals because of the way the tax burden is distributed.

DEVELOPMENT AND ISSUES OF THE PERSONAL INCOME TAX SYSTEM

In the history of the Federal income tax, the unit of taxation has gone through significant changes. From the time the Federal personal income tax was introduced in 1913 and up until 1948, there was only one tax rate schedule. An individual was taxed on his or her own income, regardless of marital status or a spouse's income. This system of individual taxation was not totally free of work disincentives. Any tax that is levied on income from one kind of work and not on income from another, creates a bias in favor of the untaxed form of income. So it is with the income tax, which taxes income from market work but not income from unpaid work in the home. Work in the home may be just as tangible and just as valuable as work in the market in terms of adding to real income. The exclusion of home production from taxation or, I might add, from the national income and product accounts, is not, presumably, a judgment about its lack of value. Rather it is the result of our inability at this time to measure home production accurately, because it does not pass through the market to be priced impartially by the forces of supply and demand. In recent years the importance of home production has been emphasized by economists and there has been an increasing literature on approaches to its measurement. Estimates suggest that home services valued in dollars may amount to as much as 47 percent of our GNP. The Bureau of Economic Analysis—BEA—has also recently added a branch which is exploring ways to construct a measurement of this missing piece of our national output. Nonetheless, as a practical matter, no technique has yet been developed which can claim to provide an accurate measure of each individual's income from home services.

As a consequence of the omission of unpaid home production from the tax base, the price of home goods and services is artifically lowered and we are likely to have more home-produced goods and services and fewer market-produced goods and services than we would otherwise choose. In this way our resources are misallocated and there is a general loss of efficiency in the economy. Moreover, the effects of this misallocation fall differently on women and men since the bias in our tax system simply reinforces other factors, such as job discrimination and societal pressures, that make it difficult for women to achieve full equality in the labor market. In sum, because work in the home is not taxed, specialization in home work is encouraged; tradition, plus the fact that a wife is likely to earn less than her husband in paid employment, dictate that it is the wife who does the specializing in home activities.

In 1948, the tax system was changed to allow any married couple to file a joint return in which the combined incomes of both spouses could be split in half with taxes paid on each half regardless of the actual distribution of earnings between the spouses. Because of the progressivity of the tax system, the effect of this provision was to reduce taxes significantly for married couples in which one spouse earned most of the taxable income. At the time, only about one-fifth of married women worked outside the home at all. Thus the provision directly reduced the tax burden of most married couples. President Truman, incidentally, vetoed the Revenue Act of 1948.

The introduction of income splitting, however, simply added another strong financial incentive for wives to specialize in unpaid work in the home. Should a married woman choose to work, the couple would lose the considerable tax benefits from income splitting that accrued when one spouse had little or no taxable income. Because of the progressivity of the income tax, her first dollar earned would be taxed at the same marginal rate as the last dollar earned by her husband.

While income splitting lowered the tax burden for one-earner married couples it imposed a price on remaining single. Simply by taking a wife with little or no taxable income, a man could substantially reduce his tax burden. A woman could do the same with a husband, but as a statistical example this case was trivial. Having already extended some of the benefits to single individuals with dependents—1951—and to certain widows and widowers, Congress in 1969 responded to the singles' penalty by lowering the tax schedule for single individuals—effective 1971. Since married couples choosing to file separately cannot use the new singles' schedule, the feature known as the marriage penalty came into effect. Thus, two single individuals who are both employed in the market will generally find that their total taxes will be higher after marriage, thus imposing a marriage disincentive for those couples where both the man and the woman wish to continue market employment. Although the new singles' schedule did not directly increase the disincentive to paid employment for women already married, it may have done so indirectly, since a reduction in one group's tax burden must be paid for by an increase—or lesser decrease—in the tax schedules of other groups.

THE CURRENT SITUATION: EQUITY AND EFFICIENCY CONSIDERATIONS

The two questions that are usually raised about a tax provision are: Is it equitable, and is it efficient. An initial response to the equity question is to look at the distribution of the tax burden resulting from the provision to see how closely it corresponds to ability to pay. In this respect the provision for income splitting and the joint taxation of married couples would seem to place a disproportionate share of the tax burden on the two-earner couple while subsidizing the one-earner couple.

The current tax system requires that married couples with the same total money income—and otherwise similarly situated—pay the same tax. Although this principle of aggregation, as it is often called, seems reasonable at first hearing, it is not so reasonable once one considers that money income is a poor measure of ability to pay when the division of time between home and market differs among couples. Take the case of two married couples with total money incomes of

$20,000. The first couple consists of two full-time wage earners each earning $10,000 a year. The second couple consists of a hubsand earning $20,000 a year with a wife who is a full-time homemaker. Both couples have the same money incomes and pay the same income taxes; yet the one-earner couple has the $20,000 in money income plus the untaxed goods and services provided by the full-time homemaker, and these go to enhance the family's standard of living. If we knew how to measure the real income from upaid work in the home and could add it to the tax base, the principle of aggregation would be more easily justified. Applied only to money income it results in an unfair tax burden on married couples in which both spouses spend considerable time in paid, and, therefore, taxed employment.

Although the full-time homemaker and her family receive favorable treatment under the income tax system, it should not be assumed that this leads to a clear welfare gain. Quite the contrary, many full-time homemakers and their families are likely to be worse off as a result of the disincentives to paid employment in the tax system. Consider again the full-time homemaker married to a husband earning $20,000 a year, which is close to the average income of a married man today. With two children, Federal income taxes paid on this income would be $2,271. Should the homemaker consider taking a job outside the home paying $10,000 a year she would face the following situation. The couple's Federal income tax bill would more than double, rising to $4,961. Social security taxes would rise by another $613 a year. Moreover, the additional social security benefits as a tax-paying wife are not likely to be much higher than what would be obtained as a "dependent" wife or widow. State and/or local taxes would also be deducted from pay. In all, out of her $10,000 paycheck the homemaker married to a husband earning $20,000 a year could expect to pay an average Federal income tax of 27 percent and a total tax—including social security and State and local income taxes—of about 40 percent. And, of course, if she does take the paying job, she and her family will lose the untaxed income that she would have been providing in the form of home-produced goods. After evaluating the options, she may decide to remain a homemaker, in which case she avoids the tax on paid market work. But if it is the tax that tipped the balance, she has been put in a less desirable position by the tax, since she would have taken the job were it not for the tax.

The income tax faced by a homemaker rises with her husband's income. Thus, the average tax on a homemaker's potential $10,000 a year job added to a husband's income of $20,000 a year was 27 percent; but the average tax on the $10,000 a year job when the husband's income is $40,000 a year would be 43 percent. The disincentive imposed by joint taxation, therefore, rises with the income of the husband.

Not surprisingly, there is a pronounced relationship between the labor force participation of a married woman and the income of her husband. As indicated in the table, married women in similar situations with respect to children and years of school completed are much less likely to be in the labor force when a husband's income is at higher levels. Of those married women who were college graduates, 69 percent were in the labor force in 1978 when the husband's income was $10,000 to $13,000 a year; but only 25 percent were in the labor force when the husband's income was $50,000 a year or more. It may be noted that there is a similar decline in hours and weeks worked during the year by wives who are in the labor force when husband's incomes rise.

I do not mean to imply that rising marginal income tax rates are the only factor causing a reduction in labor force participation at higher levels of husbands' incomes. At lower income levels there is likely to be a greater need for the extra money income from a wife's employment. But to the extent that the wife's net wage is increasingly reduced by the higher tax rates associated with rising husband's income, the tax is an important factor contributing to the observed relationship.

OPTIONS

As I have discussed earlier, the current income tax system is not neutral with respect to the decision to work in the market or the home and has particular disincentives to market employment for married women. The fact that income from homemaking activities is exempt from taxation imposes a basic bias toward work in the home. This is an unavoidable problem, however, arising from measurement difficulties. The reinforcing disincentive to market work of married women that arises because of income splitting is an avoidable problem.

I would favor a return to mandatory individual filing, which was the law prior to 1948. This would require legislation dealing with people living in community property States who for purposes of income taxation could be required to report their own incomes as individuals. Other complications may arise related to transfer of property from one spouse to another. But the proportion of the taxpaying population involved in these complications would be small. A far larger percentage would benefit from the tax change, directly or indirectly.

As an interim step, the option for married persons to file on the schedule for singles would at least remove the marriage penalty and would also help lessen the work disincentive for married women.

Proposals for extending deductions or tax credits to the second earner have also been made. The effect such proposals would have depends on the precise specification of the change. For example, if the tax change resulted in an increase in marginal tax rates to finance the proposal, the net result could be a greater bias against market work for married women than now exists. Thank you.

[Attachment to the prepared statement follows:]

LABOR FORCE PARTICIPATION RATES IN 1978 OF MARRIED WOMEN WITH CHILDREN UNDER AGE 18, BY YEARS OF SCHOOLING COMPLETED AND INCOME OF HUSBAND IN 1977

[Labor force as percent of population]

	Years of school completed by wife			
	Total[1]	0 to 11 yr	12 yr	16 yr
Income of husband:				
$5,000 to $6,999	50.6	42.9	56.1	(2)
$7,000 to $9,999	54.9	48.6	56.8	75.6
$10,000 to $12,999	56.7	49.4	56.4	68.5
$13,000 to $14,999	54.6	44.3	54.9	58.2
$15,000 to $19,999	51.3	39.8	51.7	55.2
$20,000 to $24,999	46.1	36.4	44.6	49.5
$25,000 to $34,999	40.3	33.3	34.4	48.5
$35,000 to $49,999	38.0	(2)	35.8	46.8
$50,000 and over	26.7	(2)	23.7	24.6

[1] Total includes wives with other amounts of schooling than shown separately.

[2] Base is less than 75,000 persons.

Source: Bureau of Labor Statistics.

Mr. CORMAN. Thank you very much.
Ms. Gann?

STATEMENT OF PAMELA B. GANN, ASSOCIATE PROFESSOR OF LAW, DUKE UNIVERSITY

Ms. GANN. Thank you very much, Mr. Chairman and members of the committee.

I am Pamela Gann. I am on the law faculty at Duke University. I specialize in Federal taxation. I would like to assume that my written statement will appear in the record.

Mr. CORMAN. Without objection.

Ms. GANN. Thank you.

I would just like to comment, and my comments are really derived from what I have been hearing today. I am trying not to repeat what others have said but maybe add to a few things that have not been said.

Mr. CORMAN. Thank you.

Ms. GANN. I would like to point out first of all in relation to the three remedies that Mr. Sunley suggested that I would place them in the following order of priority and then give you a comment as to why I do so.

I think his third solution on using a deduction is in the long run the least preferable of the three, importantly, as he pointed out, because it does not focus dollar-for-dollar on the problem—that is, if you use a deduction it would be given across the board, perhaps with some upper income limit, but it is given across the board and therefore would be given both to those couples who have a marriage penalty and to those couples who have a marriage bonus. And there is no reason for the latter to occur.

The second solution which he mentioned is the option to file, even if you are a married couple, on individual tax returns. That is Senator Mathias' proposal. The only weakness I see in this solution is that it does not solve the single's penalty. So if you really see that the marriage penalty at this point in our time is the most important thing, the most important problem, that does handle that problem but in turn does not handle the single's penalty.

If I had to predict, if this solution were now adopted, you might have another hearing here within 10 more years with more people talking about the single person's penalty than we had today. Remember, it was only 11 years ago that you had the single people here talking mostly about that particular penalty.

My preference is in the long run for the first approach—that we go back to the pre-1948 situation and have mandatory filing of separate returns. Thus far, Ms. O'Neill has agreed with that, and also Dr. Key agreed with that, but suggested that in the short run the second proposal might be the better one to choose.

Now I choose the first proposal, using again Mr. Sunley's numbering, because it removes both the single's penalty and the marriage penalty and you are rid of both of them at one time. I feel very strongly that in the long run the best thing for our tax system to be is blind toward marital status. And that is exactly what you would accomplish by that particular approach. Otherwise, I think with either the second or third solution we will see these merely as temporary solutions and we will be coming back every so many years trying to come up with yet another solution.

Now, I would like to point out one thing with respect to both the first remedy and the second remedy that has not been mentioned here at all today.

You will remember that if we go back to filing individual tax returns we will then have a reappearance of the very problem that we had in 1948 that caused us to resort to the joint return; therefore, we must address that problem. That is, under the different property systems, community property and common law systems, we got what we thought were unfair results because tax consequences depended upon whether you lived in a common law State or in a community property State.

If we go back to allowing, either optionally or mandatorily, filing individual tax returns, you are going to have to come up with some kind of attribution rule which will define the income which must appear on each separate individual return.

I have at least stated the problem and now let me suggest what I think the solution to that problem ought to be.

The bills that I have looked at suggest this: The community property laws will be overruled or not given tax effect. Now, some limit that only to earned income and some go all the way—that it will not be given effect both for earned income or for income for property—but on the other hand, they don't substitute a Federal definition of property. So I see the failure to provide a Federal definition of property rights, as a lawyer looking at both the tax laws and the property laws and how they interact, as a serious problem that really should be addressed by the Congressmen if they are drafting legislation in this particular area.

Moreover, I think going the route of overriding the community property laws in the long run is the wrong way to go. And I would encourage you to go in the opposite direction.

Marital property reform at the State level is clearly headed toward the extension of community property concepts. If you look at that extension as coming into more and more States, then it would be much better for the Federal tax law to give effect to or recognize that rather than working at this point in time exactly in the opposite direction. The present bills, instead, presumably give effect to common law notions of property and in turn you federally override community property.

I suggest that you will find you are going in exactly the opposite direction from what the States are going to be doing in the next 2 decades. So you need to seriously consider whether that is what you want to do in that regard.

Let me use a short hypothetical to illustrate the type of attribution question which must be answered if community property laws are not to be given effect for Federal income tax purposes. You are living in California and one spouse makes $40,000 of earned income. Community property law is overriden, for Federal tax purposes, so that spouse has to report $40,000 on his individual income tax return notwithstanding the fact that under California law the other spouse owns $20,000 of that income.

And then out of that $40,000 let's say they take $5,000 and invest in IBM stock. Now, whose property is the $5,000 of stock for purposes of reporting the dividend income? Is it the original earner's income, the person who had to report the $40,000? Do you trace that $40,000 into the $5,000 of stock and in turn say that the dividend income is all that spouse's income or do you on the other hand then say well, once you enter into a property investment we follow community property laws so that the stock is owned 50 percent each by the husband and the wife and now on their individual tax returns they each report 50 percent of the dividends?

I don't find an answer to that question in any of the bills as drafted today.

So I think that is a question that needs very much to be answered.

One last comment on this. I also have not heard anybody mention a constitutional problem in this regard, but I do think there is a potential problem here. If you override the community property laws and say that the earner of the $40,000 of income, as in my example, is going to be taxed on all of that income notwithstanding the fact that under State law he only owns $20,000 of it, you can be sure that that taxpayer or one of those taxpayers in California or the community property States, will bring an action in which they claim that the provision is a violation of the fifth amendment of the Constitution because it takes their property without due process of law.

I think that problem is something that should be explored a little more carefully before this kind of legislation is enacted. Thank you.

[The prepared statement follows:]

STATEMENT OF PAMELA B. GANN, ASSOCIATE PROFESSOR OF LAW, DUKE UNIVERSITY

It is a pleasure to have the opportunity to discuss with you issues concerning the relative income tax burdens of married and single persons. It is my conclusion that we should return to the system that existed before 1948 and require that all individuals file separate income tax returns under a single rate schedule. This conclusion is based upon three factors.

First, the failure, in my opinion, of tax theorists to develop a consensus concerning equity criteria to determine the relative tax burden of single versus married persons suggests that the present legislative solutions will be continuously unsatisfactory to portions of the citizenry at any given point in time. These "solutions" therefore will remain an uneasy compromise or will yield to a series of ever changing solutions. Nothing is more evident of this failure than the fact of these hearings today and the introduction in this session of Congress of numerous bills on the subject. The unhappy prospect of continuing to attempt to draw acceptable comparsions of married and single persons is convincing to me that the most defensible position in the long run is a return to a system of filing separate individual returns.

Second, since the use of fairness criteria has thus far not yielded satisfactory results, Congress should focus more attention upon the efficiency criteria applied by economists in analyzing these issues. Their studies demonstrate that present pooling of earned income of married couples on joint returns is inefficient because the first dollar earned by the secondary worker (usually the wife) is taxed at the marginal tax rate of the primary worker's last dollar earned—thus, typically the wife bears a high tax burden on her earnings. Secondary workers are more sensitive than primary workers to the price (after taxes) that they receive for working in the market place; consequently, if the secondary worker is heavily taxed, she inefficiently spends too much time in non-market activity (leisure and housework). An efficient tax system, in contrast, raises revenues in a way that distorts as little as possible decisions by married persons to work outside or inside the home. Greater efficiency would be achieved therefore if the joint return were eliminated so that each spouse reported his or her earned income on a separate tax return.

Third, and significantly, increasing concern over reform of the marital property laws at the state level to provide for marital partnerships pursuant to which each spouse will be treated as owning one-half of the property of the partnership (similar to the equal ownership of community property in the community property states) suggests to me that since the goals of these property reform movements are of significant social value, their interaction with the federal tax treatment of married persons should be seriously considered by Congress. Let me elaborate upon what I mean by "interaction." Under the present tax system, a married couple in a common law state obtains income-splitting for federal income tax purposes without regard to the actual legal ownership of the property producing that income under state law. Consequently, the present system does not encourage (and probably discourages) actual sharing of the legal ownership of property during marriage. A failure to share the legal ownership of property during marriage in a common law state can lead to disputes, particularly upon divorce, over the rights of one spouse (usually the wife) to the property legally owned by the other spouse (usually the husband). Suggested reforms in marital property law would achieve equal ownership of certain property during marriage (like that in community property states) so that upon death of a spouse or divorce, marital property would be treated as equally owned by each spouse and disputes about ownership of the property would be significantly reduced. If our federal tax system required the filing of separate tax returns and allowed income-splitting between spouses only where their legal ownership of property was in fact shared under the property laws of the state in which they reside, our income tax system would then be a positive inducement for married couples to share legal ownership of property under state law, thus reducing substantial conflicts over rights to property at death and at divorce.[1]

In light of these three factors, I suggest that Congress do the following:

(a) Provide that each individual file a separate tax return under the same rate schedule.

(b) Continue to recognize the community property system for federal income tax purposes so that the income-splitting provided under the marital property laws of the community property states would be recognized for federal tax purposes. In other words, *Poe* v. *Seaborn*[2] should not be overruled.

(c) Allow income-splitting for couples in common law states only if the married couple by contract or under state property laws (reformed as described above) divided the legal ownership of their marital property. To achieve this result in common law states, both *Lucas* v. *Earl*[3] and *Commissioner* v. *Harmon*[4] must be overruled by Congress.

I conclude with one general observation. Marriage is certainly an important social institution which I hope will remain indefinitely a part of our society.

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[1] The following two examples illustrate my point.

Example 1.—Assume that individual tax returns are filed for federal income tax purposes and that A and B are married. A earns $40,000 from his employment and B earns zero. A reports $40,000 on his individual tax return. If, however, A and B agree by contract that B has legal ownership of one-half of A's earnings, then A and B each report $20,000 for federal income tax purposes.

Example 2.—Same facts as Example 1. In addition, B owns stock which yields dividends of $10,000 during the tax year. B reports on her individual return all of the dividend income unless she transfers legal title to the stock to A. If, however, B were to transfer to A title to one-half of the shares, then A and B would each report $5,000 of the dividends on their separate tax returns.

[2] 282 U.S. 101 (1930). In this case, the Supreme Court gave effect to the community property system for federal income tax purposes; thus, one-half of the community property income was reported by each spouse on his or her individual tax return.

[3] 281 U.S. 111 (1930). In this case, a married couple agreed by contract that any income or property owned by them now or in the future would be owned equally as joint tenants. One-half of the husband's earned income was reported by each spouse on their separate tax returns. The Supreme Court did not recognize the contract for federal income tax purposes and held that the husband was taxed on all of his earned income.

[4] 323 U.S. 44 (1944). In this case, the Supreme Court did not for federal income tax purposes give effect to an elective community property system under Oklahoma law. The taxpayers, a married couple, had made the election under state law for the community property system to apply to their income and property; consequently, they each reported for federal income tax purposes one-half of the community property income. The Supreme Court held that the case was controlled by *Lucas* v. *Earl* and not *Poe* v. *Seaborn*; therefore, each spouse had to report all of his or her earned income on their individual tax returns, along with any income generated by property separately owned prior to the voluntary election.

> Our present income tax system recognizes the importance of marriage by the fact that Congress in 1948 chose the primary factor in determination of tax burdens to be that all equal-income married persons should pay the same taxes. Rates for other individuals (single persons and heads of households) were subsequently determined in relation to that primary factor. Anomalously, this system which was meant to reflect the importance of marriage now in fact has become a discouragement to marriage by producing the so-called "marriage tax penalty." I think it fair to assume, that in the long run as inflation makes it increasingly necessary that both spouses work and as employment discrimination and equal pay legislation effectuate their purpose, more and more persons will find that their income taxes increase upon marriage, because the fact of marriage will no longer mean that one spouse (now, usually the wife) will not be working. I also think it fair to assume that because larger numbers of persons will find that the fact of marriage increases their tax burden, more and more couples will choose to live together without being married. Consequently, if Congress believes that the institution of marriage is still important to our society, it is intolerable to continue that part of our rate structure which causes the "marriage tax penalty." Thus, I urge that no matter what the chosen method, Congress must eliminate the existence of this impediment to marriage.

Mr. Corman. Thank you.

Ms. Pond, you have testified?

Ms. Pond. I have testified.

Mr. Corman. Mr. Hartgraves.

STATEMENT OF AL HARTGRAVES, Ph. D., CPA, ASSISTANT PROFESSOR OF ACCOUNTING AND TAXATION, UNIVERSITY OF SOUTH CAROLINA

Mr. Hartgraves. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Al Hartgraves. I am an assistant professor of accounting and taxation at the University of South Carolina.

The problems and issues of which we speak today are not simple. They are complex and will be difficult if not impossible to resolve to the satisfaction of all concerned parties.

I commend you for your willingness to tackle this tough problem. It is unconscionable that your predecessors in Congress would deliberately contrive a tax rate structure which could be so fraught with inequities and ill effects as our current structure. Virtually every change in the rate structure in the last 35 years has compounded the problem.

There are three main taxpayer interest groups whose equitable interests in the tax structure attract my concern: Single taxpayers, single-earner-married taxpayers and two-earner taxpayers. Of these groups only the single-earner married taxpayer are not alleging tax discrimination under the present system. Neither of the other two groups believes it is receiving completely equitable treatment.

The basic problem is caused by a conflict in objectives in our tax rate structure and the way we interpret those objectives. The foundation canons of our tax system include the concepts of equity and tax rate progressivity.

In 1948 it was ostensibly decided that horizontal equity for married persons could be enhanced by allowing income splitting. In 1969, Congress lowered the taxes for single persons and in so doing separated the single tax rate schedule from the rate schedule used to compute income splitting for married persons.

he result is that both groups charge that they are now inequitably
ted relative to the other groups.

here are two solutions which I would suggest for dealing with
e problems of horizontal equity: One is a short-term solution, the
r a permanent solution.

n the short term I believe the greatest contribution to the achieve-
t of equity would be accomplished by the removal of the marriage
alty exacted against most two-earner married couples. Not only
his penalty basically unfair, in that it imposes a substantial tax
narriage but it is also unfair in that it is regressive.

he statement which I have submitted for the record shows that for
ounts up to about $75,000 of taxable income, the maximum poten-
marriage penalty progresses from 2 percent to 7 percent, then
n $75,000 on up, the maximum marriage penalty gradually de-
ses, such that the very wealthy, two-earner couples are only
ligibly affected by the penalty.

he impact of inflation on the marriage penalty is also more heavily
by the lower- and middle-income taxpayers than by the wealthy.
wealthier the two-earner married couple, the smaller the increase
he marriage penalty corresponding to an increase in taxable
me.

f there is going to be a tax on marriage, should it not be equitably
lied and not favor the high-income taxpayer? Therefore, in the
rt run I would recommend the adoption of the proposed legislation,
. 3609, to simply allow married taxpayers the option of filing sep-
tely, using the single taxpayer rate schedule, thus eliminating the
rriage penalty and thereby largely separating the tax issue from the
rriage decision.

his would eliminate the tax advantage of nonmarital cohabitation
narriageable persons as compared to marriage. The major limita-
of this bill is that it deals with a consequence, not a fundamental
e, of the problems inherent in the tax rate structure; therefore, in
long run I believe the only viable solution to the problems will be
ized when we abolish income splitting as a desirable objective for
rried persons and return to a single tax rate schedule used by all
me earners.

nder this system, differences between responsibilities for various
payer groups such as heads of households could be accounted for
ugh exemptions, deductions or credits.

change in our concept in this country of the basic income earner
iires this redefinition of the basic tax unit.

he family tax unit which allows income splitting is not appropri-
under current familial financial arrangements. No longer is the
ily geared to the single breadwinner concept; it is being more com-
for spouses to maintain separate jobs and other sources of income
ell as separate checking and charge accounts.

he only time the financial transactions of the spouses are merged
nany families is at the tax preparation time. This becomes an un-
ural union.

ecause of the far-reaching ramifications of the adoption of a system
izing a single rate schedule, in my opinion such a change would
iire an extensive period of consideration, study and debate. For

that reason, I believe such a solution should be established as an objective to be achieved within the next 5 years.

Inability to achieve the permanent kinds of improvements which are needed certainly does not justify inaction, Mr. Chairman, for such inaction would only extend the inequities suffered by penalized married taxpayers.

On the other hand, adoption of H.R. 3609 will immediately relieve two-earner married couples of an unfair tax penalty without imposing greater inequities on any other group. Thank you.

[The prepared statement follows:]

STATEMENT OF AL HARTGRAVES, PH. D., C.P.A.

Mr. Chairman, members of the committee, my name is Al Hartgraves, Assistant Professor of Accounting and Taxation, University of South Carolina.

I represent myself and Professor W. Elbert Jones, Associate Professor of Accounting at The University of South Carolina, who assisted in the preparation of this statement submitted for the record.

The problem before this committee today—that pertaining to the equitable treatment of the various classes of taxpayers—is one for which there is no easy solutions, possibly no perfect solution. However, there is a best solution, and we must find it and pursue its adoption. I commend you for your willingness to tackle this difficult problem.

Introduction

A bias against certain married working couples has existed in the income tax laws in the United States since 1969. This bias takes the form of increased aggregate taxes for certain married taxpayers above what they would pay if they could file as single taxpayers. Not all married taxpayers are penalized; however, many actually save taxes because of the partial income splitting benefits of the tax schedules for married persons filing jointly. The penalty is borne most by those working couples where both spouses are on about the same income level. Consequently, by divorcing and continuing to live together, many working married couples could save taxes without changing anything else.

The problem in writing legislation to remove the marriage penalty is to make sure that correcting one inequity does not create another. The existing tax bias against married couples is a product of Congress' attempt to remove the so-called single taxpayer penalty which has existed since 1948. Unless carefully considered, a new law to correct the marriage penalty will compound the singles penalty or possibly even create other inequities.

Marital status penalties

To illustrate the magnitude of the marriage penalty, assume a married couple has combined taxable income of $30,000. If they have only one income earner, on a joint return their total taxes would be $6,238; however, if they terminate the marriage and file as single individuals their total taxes become $7,962, all of which would be taxed to the one income earner. There is an advantage of $1,724 gained by the couple remaining married and continuing to file jointly. To change the relative effects of the tax rate schedules, assume that the $30,000 of total income is earned equally by both spouses.

Under this assumption, on a joint return they would still pay $6,238 in total taxes; however, by terminating the marriage and filing separately they would pay $2,605 each or a total of $5,210, a savings of $1,028. For this couple with $3,000 of Taxable Income, the potential effects of the tax rate schedules (coupled with their decision pertaining to marriage) can vary from a disadvantage of $1,724 associated with the single taxpaying status to a disadvantage of $1,028 associated with the status of married filing jointly. To complete the example, assume again that this couple has a combined taxable income of $30,000 with $24,353 attributable to one spouse and $5,647 attributable to the other. If they file jointly, their income tax will be $6,238, and if they terminate the marriage and file as single individuals, together they will still pay taxes of $6,238 ($5,700 by one and $538 by the other). We can now see the full range of possibilities; as long as the lower income spouse earns taxable income of no more than $5,647 of the $30,000 total taxable income, they are better off from a tax standpoint to remain married and file jointly. If that spouse's contribution to total taxable ncome exceeds $5,647, the couple saves taxes to file as single individuals. At $5,647 of taxable income for the low income earner, the couple should make their narriage decisions based on considerations other than the tax rate schedules, since there is no mariage penalty to be suffered or marriage advantage to be gained in the payment of their taxes. In the above example it is evident that, lepending on the distribution of taxable income between the two taxpayers, there re actually two existing aspects to the marital status penalty—sometimes it avors marriage; sometimes it favors nonmarital cohabitation.

Tables I and II extend the above analysis to several selected income levels. Table I shows for each income level the taxes and related marginal income tax ate for married persons filing jointly and the combined taxes and marginal rate or two single taxpayers, assuming each taxpayer earns one-half the total taxable ncome. The table also shows the difference in taxes for the married couple and he single couple—that is the amount of the marriage penalty—and the marriage enalty as a percentage of taxable income.

Two observations from Table I are important to understanding the full impact f the 1969 tax rate schedule changes:

1. The greatest amount of penalty as a percentage of taxable income is felt by lers with combined income of about $75,000. Filers with combined income below nd above $75,000 pay a smaller percentage of their income as a marriage penlty. If there is going to be a marriage penalty tax, should it not also be a proressive tax?

2. The rate of increase in the penalty corresponding to an increase in taxable ncome also favors the high income brackets. A 33⅓ percent increase in taxable ncome from bases of $15,000, $30,000, $75,000, and $150,000 results in respective ncreases in the marriage penalty of 55 percent, 82 percent, 19 percent, and 3 ercent. This illustrates again the regressive effects of the marriage penalty.

ABLE I.—COMPARISON OF TAXES AND MARGINAL TAX RATES FOR COUPLES MARRIED FILING JOINTLY AND UNMARRIED FILING AS SINGLES

		Married, filing jointly		Unmarried, filing as singles				
	Percent change	Total taxes	Marginal tax rate	Total taxes	Marginal tax rate	Marriage penalty	Penalty as a percent of taxable income	Percent change
mbined taxable income:								
$10,000		$1,062	18	$844	18	$218	2.2	
$15,000	50	2,055	21	1,764	19	291	1.9	33
$20,000	33⅓	3,225	24	2,774	21	451	2.3	55
$25,000	25	4,633	32	3,926	24	707	2.8	57
$30,000	20	6,238	37	5,210	26	1,028	3.4	45
$40,000	33⅓	10,226	43	8,354	34	1,872	4.7	82
$50,000	25	14,778	49	11,904	39	2,874	5.7	54
$60,000	20	19,678	49	15,924	44	3,754	6.3	31
$75,000	25	27,778	54	22,864	49	4,914	6.6	31
$100,000	33⅓	41,998	59	36,134	55	5,864	5.8	19
$125,000	25	57,528	64	51,036	63	6,492	5.2	11
$150,000	20	73,528	64	66,786	63	6,742	4.5	4
$200,000	33⅓	107,032	68	100,106	68	6,926	3.5	3
$250,000	25	141,724	70	134,774	70	6,950	2.8	0

TABLE II.—MAXIMUM MARITAL ADVANTAGE AND BREAK-EVEN DISTRIBUTION FOR NO ADVANTAGE

	Maximum potential advantage		Break-even income distribution
	Married	Single	
nbined taxable income:			
$10,000	325	218	$8,447/$1,553
$15,000	550	291	12,883/2,117
$20,000	952	451	16,500/3,500
$25,000	1,319	707	20,213/4,787
$30,000	1,724	1,028	24,353/5,647
$40,000	2,431	1,872	33,623/6,377
$50,000	3,289	2,874	42,372/7,628
$60,000	4,265	3,754	50,659/9,341
$75,000	5,615	4,914	63,262/11,738
$100,000	8,055	5,864	83,789/16,211
$125,000	9,859	6,492	104,700/20,301
$150,000	11,359	6,742	125,189/24,811
$200,000	12,855	6,926	170,704/29,296
$250,000	13,163	6,950	219,519/30,481

Table II presents the maximum potential penalty associated with the "married filing jointly" and "single" taxpaying statuses. The last column in Table II shows the break-even income distribution between the two taxpayers where there is no difference between the total taxes for married persons filing jointly and for two single taxpayers. For example, the income level of $30,000 with a distribution of taxable income between the two taxpayers of $24,353 and $5,647 produces the same result whether they are married filing jointly or are unmarried filing as singles. If the income distribution swings toward the higher income earner, the taxes are less for marrieds than for singles; if the income distribution swings toward the lower income earner, the taxes are less for singles than for marrieds.

Impact of marriage penalty

Latest U.S. Census data show that 51 percent of all married couples have two working spouses and that on the average 77 percent of the income is earned by the husband and 23 percent of the income is earned by the wife. For the lower earner, the break-even income for the various levels in Table II range from about 11 percent at the $10,000 income level to a high of about 17 percent at the $150,000 income level. Since the average lower earner in married couples earns more than the break-even income, a substantial percentage of all married persons are penalized by the structure of the current tax rate schedules.

It is clear from the above analysis that there is an existing marriage penalty borne by most married taxpayers in the United States and the penalty falls disproportionately on taxpayers in the middle income brackets in which most family incomes also fall.

Appropriate tax unit

The inequitable tax treatment of two-earner married taxpayers described above which resulted from the 1969 adjustment of the single taxpayer rates surely was not an intended consequence. To deal effectively with the problem (that is, the problem of horizontal equity among the various taxpayer classes), the issue of the appropriate tax unit must be resolved. Since 1948 there has been no clear and consistent definition of the tax unit reflected in the tax rate structure.

In fact we have tried to operate with two different tax units, the individual and the family. We have taxed single persons under the individual tax unit concept and allowed married persons the option of being taxed as part of a family (as married filing jointly) or as an individual (as married filing separately). Under the latter option, the married person who opts for treatment as an individual tax unit is not accorded the full benefits of the unmarried individual tax unit.

We have attempted a virtually impossible task—that of achieving horizontal equity between married and single tax units while simultaneously preserving the concept of progressivity. The basis of the problem, in my opinion, is that equity and equality have been greatly confused. Single taxpayers want taxes equal to those of single earner married couples, while two earner married couples want to be taxed as if they were single. If the ultimate determination of equity is the satisfaction of all taxpayers, then, with respect to single and married taxpayers, it could be hypothesized that equity could be achieved most easily by permitting single persons to use the schedule for married persons filing jointly and permitting married taxpayers to file separately using the tax schedule for single taxpayers. Under this arrangement, the schedule for single taxpayers would no longer be advantageous to anyone except married persons filing separate returns. However, married taxpayers would again charge discrimination unless they also could file separately and use the tax schedule for married persons filing jointly. If this is permitted, use of the single taxpayer schedule is no longer advantageous to anyone and we are back to one tax schedule (except for heads of households) for married and single persons. This would seem like an ideal solution to the problem except that the single earner married taxpayer would have been dealt a blow—he would be taxed exactly as a single taxpayer with the same amount of taxable income. The concept of income splitting would be lost in this search for simple equity. Remove whatever justification exists for income splitting, and the one tax schedule approach (the pre-1948 system) seems to be the best available alternative.

It is obvious that our basic delimma was caused by the 1948 legislation aimed at removing the effects of state community property laws on the federal axation of income of married persons. With the 1948 legislation Congress essenially adopted a Federal community property law with respect to income attribuion. The national circumstances under which that legislation was written were drastically different from those of today. At that time our society consisted largely of single earner married couples; today in most married couples, both spouses are employed. And too, the percentage of single persons in the population is substantially higher and rising.

Recommendations

Based on the above reasoning, ideally I would recommend the abolishment of ncome splitting for married persons as an objective of the tax rate structure and ecommend the adoption of only one tax rate schedule to be used by all taxpayers. Differences between responsibilities and expenses for various groups, such as Heads of Household, should be accounted for through deductions or credits. In mplementing the single rate schedule approach, I would further recommend hat married persons be allowed to either account for actual deductions separately for each spouse or allocate total deductions in proportion to their respecive incomes. To allow arbitrary allocation would give married persons an unfair dvantage over single persons. The IRS should continue to provide different forms for single persons and married persons to accommodate the reporting by married persons of income, deductions, and credits by both spouses on the same return. Many states have successfully used this type of return format for many years.

The above recommended changes represent what I believe to be the best soluion to the overall problem of horizontal inequities among various taxpayer classes. However, given my lack of faith in Congress to deal expeditiously in such broadsweeping terms with these issues, I believe the most politically expedient means of dealing with the existing inequities is by the adoption of H.R. 3600 by this session of the Congress with continued study of the tax unit problem working toward the total revision of the tax rate structure within five years.

By adopting H.R. 3600, the most serious of the currently existing inequities—the marriage penalty—would be eliminated. This bill would simply allow married axpayers the option of filing as single taxpayers. This adoption would largely separate the tax issue from the marriage decision. It would eliminate the tax advantage of non-marital cohabitation by persons of the opposite sex as compared to marital cohabitation.

H.R. 3600 does not respond to the appeal of the single person who wants equality with the single earner married person who would continue to receive an income splitting advantage. This alleged inequity (the singles penalty) can be corrected only by consideration of the broader question of the appropriate ax unit.

I would be surprised, but pleased, if this session of the Congress could resolve the broader issues. Inability to achieve the permanent kinds of improvements which are needed certainly does not justify inaction, for such inaction would only extend the inequity suffered by the penalized married taxpeyer. On the other hand, the adoption of H.R. 3600 will immediately relieve two earner married couples of an unfair tax penalty without imposing greater inequities on any other group. I urge the adoption of this bill.

Mr. Corman. Thank you.
Mr. Schwartz?

STATEMENT OF NED SCHWARTZ, ASSISTANT DEAN, SCHOOL OF BUSINESS, WESTERN NEW ENGLAND COLLEGE, SPRINGFIELD, MASS.

Mr. Schwartz. Mr. Chairman, thank you for the opportunity to speak here.

My name is Ned Schwartz. I am currently the assistant dean of the School of Business at Western New England College in Springfield, Mass. I represent both myself and a wide variety of students in my taxation classes, where over the past few years the issues before the committee were the basis of some stimulating debate.

For these classes certain criteria were established for an overall fairer tax system.

First: There should be equity among all taxpaying units. It is imperative that we strive for consistency in the application of the code provisions in order to promote the idea of each person paying his or her fairer share of the cost of Government.

Second: The Internal Revenue Code should not provide the economic stimulus to either instigate or inhibit social decisionmaking. An example would be a tax incentive to marry or not marry.

I happened to be single. I know that because I have a mother in Pittsburgh who keeps reminding me of that factor every week. Quite frankly, today I would choose to stay single because of the substantial tax costs for merely changing the form of a current relationship.

If we must work within the current income tax structure, I make the following observations:

Establishing horizontal parity, marital parity, while maintaining progressive tax rates, is impossible. One group will invariably benefit relative to the other. If this would result in a loss of revenue, by adjusting the scales of the tax burden, then the answer is not to deny the equity but to adjust the common rate to generate the revenue that is needed by Government.

With that in mind, we from my classes, feel that the least offensive alternative would be this, to the current situation: establish a unified tax rate schedule for all taxpayers regardless of social situation or marital status. The net result would really be equitable, since all of the socioeconomic considerations such as additional cost burdens for dependents, amount of societal benefits received by a tax unit with more than one person in it, and the economies of scale for multiple people within a unit would neutralize one another.

Taxpayers will only be willing to accept the burden of taxation if they have certainty that the other guy is not getting a better break.

Second: You must establish a Federal definition of taxable income which would place married couples at least in geographic parity if not marital parity with other married units.

As the testimony will probably indicate, there are numerous conflicting social and economic arguments that each unit can promote, Mr. Chairman, and justify a disparity in the tax burden that each unit should bear relative to the other. The code should not get caught between these various issues.

Now, if I may be so bold as to suggest looking beyond the present income tax system, I would like to relate the following alternative which was consistently the No. 1 solution proposed within my classes:

If I may paraphrase Adam Smith, the subjects of every State ought to contribute in proportion to the respective enjoyment of the revenues which they enjoyed under the protection of the State.

I suggest changing the word "revenue" to "benefits" so that the units contribute to the cost of government in proportion to the benefits they receive from society as opposed to the revenues.

The mere receipt of income per se does not entitle any unit to any greater benefit from what society has to offer until that income is ac-

tually converted. Income, therefore, especially in light of inflation, is
too vague a base on on which to equitably assess the tax burden. The
use or consumption, therefore, rather than income, is the more definable
base on which to set the burden, since the burden would correlate to the
benefit directly by the participatory choice of each respective tax unit.

Now, although this approach might seem too dramatic a departure
from the current system, the needless complexity of the current code
s manifest evidence of the futile attempts to piece together a rational
ax-raising system.

In conclusion, I implore you that you can no longer patch the holes
n your driveway because of mere political expediency. It is time, I
ubmit, for a new driveway. Thank you.

[The prepared statement follows:]

STATEMENT OF NED SCHWARTZ

Mr. Chairman, members of the Committee, my name is Ned Schwartz. I am
urrently the Assistant Dean of the School of Business at Western New England
ollege in Springfield, Massachusetts, where I am also an Assistant Professor
f Business Law and Accounting, in the area of Taxation.

I represent both myself as an unmarried, single taxpayer and the wide cross-
ection of graduate students in my taxation classes over the past few years,
vherein the issues currently before the committee were the bases for some stim-
ılating and heated debates. From these classes, three goals and objectives for the
axing structure were established:

1. There should be equity among all taxpaying units. It is imperative that we
trive for consistentcy in the application of the I.R.C. provisions in order to pro-
no.e the idea of each person paying his or her fair share of the burden of
overnment.

2. The form of any unit should not prevail over the substance of any unit when
etermining its overall tax liability.

3. The Internal Revenue Code should not provide the economic stimulus to
ither instigate or inhibit social decision making. In today's rapidly changing
ocial environment, any use of the code to direct social decision is at best dan-
erous. An example would be a tax incentive to marry or not to marry. I happen
o be single. I know that because I have a mother in Pittsburgh who reminds me
f that fact—every week. Quite frankly, I would choose to live with someone
nstead of marrying due to A) the substantial tax cost for merely changing the
orm of a relationship and B) as a matter of principle, the "justification" for
his additional cost runs against every tenet that I learned both studying and
eaching taxation. The Catch 22 situation that arises from that decision is that
would be technically violating local law—not to mention an even more influen-
ial law—my mother.

Based upon my study of these issues, the current income tax structure cannot
ccommodate substantive equity among tax units. However, if we must work
ithin the current income tax structure, I make the following observations:

1. Establishing total horizontal parity, marital parity while maintaining pro-
ressive rates is impossible. Currently, two tax units are justifiably claiming an
nreasonable burden of tax liability, single persons and married units with two
ources of income, relative to married units with one source of income and heads
f household. I believe these claims are justified because it is impossible to sub-
antiate all of the socio-economic rationales for allowing disparate tax treatment
r all persons within each particular tax unit. Therefore, tax equity would
eem to dictate that all tax units should be taxed with a common marginal tax
hedule. If this would result in a loss of revenue, then the answer is not to
eny the equity, but to adjust the common rate to generate the revenue needed.

I would like to make the following suggestion. The least offensive alternative
at we have discussed in my tax classes would be this:

(A) Establish a unified tax rate schedule for all taxpayers, whereby every
xpayer regardless of social situation or marital status would be subject to the
me marginal rates. The net result would be equitable since all of the socio-
onomic considerations such as additional cost burdens and economies of scale

would be neutralized. Taxpayers will only be willing to accept personal sacrifice if they have certainty that the other guy is not getting a better break. This alternative would eliminate the built-in bias between unmarried units with two incomes and married units with one income. This approach would also promote the progressive tax structure since all taxpayers would be subject to higher rates regardless of marital status or social situation.

(B) Establish income tax parity between community property states and common law states. This can be accomplished by either (i) allowing an adjustment to married couples equal to the amount of income which would be necessary to balance income between spouses or (ii) establish a federal definition of taxable income for income tax purposes which would place married couples at least in geographic parity, if not marital parity, with other marital units. The result would be that married units with one income would benefit. Congress will have to directly face the American people and state that one group of taxpaying units is to receive favorable tax treatment because of clearly delineated national priorities. I am certain that other tax units could easily find fault with this approach. In fact, as the testimony clearly indicates, there are numerous conflicting social and economic arguments that each unit will promote in justifying a disparity in the tax burden that each 'unit' should bear relative to the other. The Code should not get caught between these various issues.

If I may be so bold now to suggest looking beyond the present income tax structure, I would like to relate the following alternative which consistently was the number one solution proposed for this and other problems by my classes. To quote Adam Smith, "The subject of every state ought to contribute towards the support of the government in proportion to their respective abilities, that is, in proportion to the respective enjoyment of the revenues which they enjoy under the protection of the state". I suggest changing the word from revenues to benefits so that the units bear the cost of government in proportion to the benefits they enjoy which are protected by the state. The mere receipt of income per se does not entitle any unit to any greater benefit from what society has to offer until that income is converted. Therefore, the benefits of society can only accrue after the income is spent, invested, or given away. Income therefore, especially in light of inflation, is too vague a base on which to assess the relative burden of supporting the society. The income base is causing the current dilemma of who should bear what tax burden. The use or consumption of that income therefore is the more definable base on which to set the burdens of the cost of government since the burden would correlate to the benefit, by the participatory choice of the individual tax unit. Although this approach might seem too dramatic a departure from the deeply embedded tradition of taxing income, the complexity of current code is manifest evidence of futile attempts to provide a rational tax system based on income. My students feel that only this approach will lead to genuine tax simplification and reform toward total equity.

My students also raised a very poignant observation. "The current state of the Internal Revenue Code is reflected by the fact that we spent an entire semester (or even two) and still are able to merely see the tip of an enormous iceberg of tax law, even after admitting learning a great deal of usable information." To conclude, the issues before the committee today are representative of the Code as a whole and very much like this volleyball. It may look usable to some of you, but to me it is deficient for its purpose. If a group becomes vocal, you may react as in the past to appease this group. You can do this easily. But alas, another segment of society will pay. You can then fix that—and so on and so on, until the ball just doesn't do what it is supposed to do. Thank you.

Mr. Corman. We are very alarmed at the low opinion you have of political expediency.

Mr. Schwartz. It is an election year, so I must take that into consideration, being the pragmatist that I am.

Mr. Corman. Every year is an election year.

Mr. Conable?

Mr. Conable. Well, I thank you all for your testimony. I must say one needs to realine one's thinking on these things frequently.

Ms. O'Neill, I would like to get from you a few more statistics. You may have them, or you may not. I would be interested in them. I think you acknowledge that two-worker couples also have work in the home

nd untaxed home production. Even if we put a dollar value on this
ype of income, we are still going to have a marriage penalty, aren't
e?

Ms. O'Neill. That is true; the marriage penalty can be eliminated
nly if two-earner couples pay no more than if they were single in-
ividuals. Recognizing untaxed work in the home points up a different
sue; namely, the inequity that results when one-earner and two-
arner couples with the same total money income between them are
equired to pay the same taxes.

Mr. Conable. Well, I find some difficulty in ascribing values to
nese things simply because society doesn't ascribe values to them. I
ealize that we should acknowledge that the real values are there. It
difficult to adjust our institutions to real values that are unrealized.
nd I acknowledge that we worry about that some. We are conse-
uently being urged, for instance, to take those values into account
elative to social security; and yet if we were to fix the value of work
the home, we would be in real trouble. Thus, symmetry is difficult
achieve in this area. I suppose we are going to continue to compro-
ise, to patch the potholes in this field.

Let me ask you these questions:

How many couples will be one-worker couples for the duration of
neir marriage? Does it tend to be a permanent or a temporary status?
think that statistic is changing, but there must be some figures avail-
ble now to indicate how many remain one-worker couples in the
arket place for the duration of their marriage. Is is 30 or 40 percent
this point?

Ms. O'Neill. Actually, it is not a question that is as easy to answer
you might think. Most of the data we have show who is working in
ny one year.

Mr. Conable. There is no way of tracing them through the life of
e marriage; is that correct?

Ms. O'Neill. The census does not ask a resrospective question, al-
ough researchers have urged that they do. Nor has there really been
ny systematic study which puts together the bits and pieces from
isting longitudinal surveys.

Mr. Conable. But we don't have any statistics on the number of
omen who never work during a marriage——

Ms. O'Neill. Well, you do know——

Mr. Conable [continuing]. In the marketplace?

Ms. O'Neill. Based on social security data, we know that among
omen aged 50 in 1971 about 60 percent seemed likely to have worked
ough in covered employment to be fully insured at retirement. Per-
ps an additional 10 percent had work experience outside the cov-
ed sector; for example, Federal Government. For those women who
e now in their 20's, these percentages are likely to be much higher.
d the number of years in the market longer, based on their very high
bor force participation to date.

Mr. Conable. What percentage of one-worker couples have children
the home under the various ages of 3, 6, 12? Do you have those
ures?

Ms. O'Neill. Well, a substantial proportion of both one-earner and
o-earner couples—most married couples who are under the age of
or 55 will have or have had at least one child.

Mr. CONABLE. I am looking for relative percentages. How do they compare?

Ms. O'NEILL. In 1978, among all married women under age 55, 62 percent of those in the labor force had children under age 18—23 percent had children under 6; 76 percent of those out of the labor force had children under 18—40 percent had children under 6. Among married women in the central age group, 35 to 44 years of age, 82 percent of those in the labor force had children under 18—10 percent had children under 6—and 88 percent of those out of the labor force had children under 18—23 percent had children under 6.

Mr. CONABLE. Do there tend to be more one-worker or two-worker couples at very high income levels?

Ms. O'NEILL. At very high income levels—$50,000 a year or more—there are likely to be more one-earner couples.

Mr. CONABLE. In other words, the two-worker couples tend to reflect economic pressure more than the actual desire to work in the marketplace?

Ms. O'NEILL. They reflect economic pressure and the opportunities to earn income by each spouse; and to some extent I think it also reflects the very high marginal tax rates on wives. When the husband's income is very high, the wife faces a very high tax rate should she go to work, and unless her own earnings are very large, she has a strong incentive not to work.

Mr. CONABLE. Well, implicit in this whole discussion there has been the assumption the marriage penalty relates mostly to earned income, because there is where the disincentive to work comes in, rather than the unearned income.

However, the penalty is different only in degree, isn't it, with respect to earned and unearned income?

Ms. O'NEILL. Well, that is true.

Mr. CONABLE. Thus what you say about the one applies to the other in some lesser degree?

Well, where are these statistics available generally, or has there been a recent careful analysis of the statistical incidence of two-worker couples, children, income levels, and so forth?

Ms. O'NEILL. The Bureau of Labor Statistics does publish the basic data every year on the labor force participation of women, classified by husband's income, number of children and that sort of thing. They also have information on the percent of income at each income level earned by the spouses.

Mr. CONABLE. Is that regularly updated?

Ms. O'NEILL. Yes, sir; the complete survey comes out once a year; more limited information, once a month.

Mr. CONABLE. My impression is the statistical base is changing quite rapidly; isn't that correct?

Ms. O'NEILL. Well, it comes from the basic current population survey. The sample is larger now than in the past; and I think they have embellished the question some. So, I think the details are richer.

Mr. CONABLE. I have taken too much time. Thank you.

Mr. CORMAN. Mr. Schulze?

Mr. SCHULZE. No questions.

Mr. CORMAN. Thank you.

Let me inquire: We are always faced with trying to achieve rough justice and simplicity at the same time. Would any of you differ with the theory of the community property States that the earned income of the married couple ought to be apportioned 50–50? Does anybody have any trouble with that, if we assume for the moment that may be a relevant part of what we are trying to decide to do? It seems to me it might make more sense than trying to say, if one spouse earns $10,000 and one earns $40,000, that you would take that into account. Why not say they earn $50,000 between the two of them and split it? It does seem to me that there is some rough justice and some reality to all of that.

Does anybody have a contrary view or any comment?

Ms. GANN. I don't have a contrary view, but I do have a comment on that.

With the increasing divorce rate, at least as a lawyer I am quite aware in the common law States where you do not automatically treat legal ownership of earned income 50–50, that you still have tremendous disputes upon divorce as to how the property ought to be split.

That may be inherited property, but much of that property is going to be property that is accumulated out of earnings during the marriage. So, we do have a conflicting problem that while the marriage is a happy one, we like to assume there is equal sharing of income and each thinks they have one-half of what is there; but it is quite evident that upon divorce, when you have an unhappy couple, they do argue over who ought to have what property.

The person who goes into the divorce with the legal ownership of the property is the one who has the upper hand; and you typically, therefore, disadvantage the woman who has not worked or has not worked at the high wage, because she, in turn, does not have the legal ownership to an equivalent amount of property. So she either has to argue for property through making alimony-type arguments or fault-type arguments.

The present income tax system which allows income splitting on the joint return without regard to the legal ownership of the underlying property, I think, contributes to that problem; and most marital property reform persons prefer the community property system because it assumes that in a happy relationship the property is treated as owned by each; and, in fact, they so designate the legal title to be owned by each.

Under our present tax system, there is no incentive in the common law States for the high earner to in fact transfer any legal title; and I see that as a fault in the system.

So, I think it is correct to assume that while a couple is a happy one, that is the assumption they are working under; but with the increasing rate of divorce among married persons, I see it as a significant problem that has to be dealt with.

Mr. SCHWARTZ. I think Lee Marvin will substantiate that. I don't believe in the artificial shifting of income. I think it is contrary to the purposes of the code to attribute the income to the person whom it is responsible for.

Every time we get into a problem like this we find ourselves creating more problems than the attempted cure. I would advise against any artificial income shifting.

Mr. Corman. Mr. Schwartz, when you have had more experience in life, you come back and we will talk about it.

Thank you very much.

Our next witness is Congressman LaFalce.

STATEMENT OF HON. JOHN J. LaFALCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. LaFalce. Thank you, Mr. Chairman.

Mr. Conable. Mr. Chairman, I am happy to greet my neighbor, Congressman LaFalce, who has achieved marital status since the last income filing period and who, I am sure, can enlighten us a good deal about the impact it has had not only on his relationship but his take-home pay.

Mr. Corman. Incidentally, at the conclusion of the testimony of our colleagues we will insert in the record statements by Congressman Green from New York and Congressman McDonald from Georgia.

Mr. LaFalce. Mr. Chairman and Mr. Conable and Mr. Schulze, it is a pleasure to be here today. As a married Congressman, as opposed in the past 4 years as a single Congressman, I should add there is a difference.

I would like unanimous consent to have the entire text of my remarks included in the record.

Mr. Corman. Without objection, it will be.

Mr. LaFalce. Thank you, Mr. Chairman. Mr. Chairman, this Ways and Means Committee has a tremendous responsibility at all times and it seems to me especially this year as you consider just what we are going to do with our Internal Revenue Code, if anything.

My own thoughts, for whatever you might consider them, are that two types of tax cuts stand out in my mind as necessary this year. The first would be some type of adjustment in the social security tax. I think we need to do this for not only the sake of equity but as an anti-inflationary measure.

Second, and perhaps equally as important, we have neglected productivity within the United States for the past 20 years or so. If we are going to improve productivity, and that is necessary to combat inflation, we are going to have to do something about the supply side of our economy. We are going to have to have some supply side tax cuts. That is not an income tax cut.

Some people call for income tax cuts and label them as the supply side. As far as I am concerned, they are pure Keynesian cuts. They are aggregate cuts. We need something along the lines of the accelerated depreciation, investment tax credits, Mr. Chairman, whether it is Jones, Conable, or something along those lines.

OK, however, at some point in time we are going to have to do something about our income taxes. Now what that is going to be I don't know. It has revenue impact. This committee is going to have to make that judgment. Congress is going to have to make that judgment. But at some time we are going to have to do something about income taxes.

When we do, whether it is this year or next year, it seems to me that at that time we must address this terrible inequity, which I think is the grossest inequity within the Internal Revenue Code, which is to treat people differently because of their marital status and particularly to discriminate against them because they are married.

Now a lot of different bills have been introduced suggesting different ways. I got mine and perhaps every member of the Ways and Means Committee would have his. I don't want to opt for any particular one at this point in time.

The only point I want to make is whenever we make the collective judgment that income tax cuts are necessary, that is the time that we ought to address ourselves to this gross inequity. Thank you very much.

[The prepared statement follows:]

STATEMENT OF HON. JOHN J. LAFALCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I want to take this opportunity to commend you for conducting these hearings on the issue of the marriage penalty tax.

Prior to 1969, working married couples had a tax advantage over single persons. In 1969, Congress attempted to remove that tax advantage with the Tax Reform Act of 1969, which removed the inequitable tax burden on single taxpayers who had been paying up to 42 percent more than married couples with a single wage earner. However, that Act also left a taxing scheme which forces a husband and wife who both work to generally pay more taxes than they would, if they had remained single and had merely lived together.

In concrete terms, if both spouses earn $4200 each, they pay a penalty of $191 more than a single wage earner making $8400. If both spouses earn $15,000 each, the marriage penalty tax is $907; and if both spouses each earn $30,000, the tax penalty is $3,764.

The penalty is not only substantial; it is also grossly and clearly inequitable. Under the Internal Revenue Code, married couples should not be treated differently from single persons.

As a result of the Tax Reform Act of 1969, married couples only have the option of using the rates for married individuals filing separately, or, combining their incomes and filing a joint return. The results are equally disastrous for the married couple. Married couples who file separately face tax rates significantly higher than those for joint returns; and that inherent penalty encourages most couples to resort to the joint return. However, the joint return has proven to be no real friend to the working married couple, because the income of the second wage earner is inexplicably taxed at a higher rate than the first. Therefore, as family income increases and the incomes of the husband and wife become more equal, the marriage tax penalty also increases.

The impact of the marriage tax penalty has grown in recent years, as more and more families have had to rely on a second wage earner, in order to make ends meet and cope with staggering rates of inflation. The number of working wives has skyrocketed in recent years. In 1950, approximately 20 percent of all married women were employed; in 1980, more than 50 percent of all married women are employed. Reputable experts have estimated that perhaps 70 percent of all wives will be employed by the end of this decade.

On December 20, 1979, I introduced H.R. 6209, which would put an end to the unjust practice of taxing married working couples more than single taxpayers. H.R. 6209 would eliminate the marriage penalty by providing that all individuals use the federal income tax rates applicable to joint returns and that a husband and wife could file separately, if this was to their advantage.

My bill would do more than merely return our taxation system to its pre-1969 form; it would benefit those currently penalized by the marriage tax, without inflicting greater burdens on other groups of taxpayers.

The massive influx of working wives during the 1970's is a compelling reason for a reexamination of the tax code's effect on married couples. At the present time, more than 38 million Americans, or in other words, more than 19 million couples, are being penalized for nothing more than marital commitment. Married couples face many pressures in our society, and the last thing the tax code and the Federal Government should be doing is adding to those substantial pressures.

A tax code must not only be fair; it must also appear to be fair. Clearly, a system that discriminates against millions of taxpayers solely on the basis of marital status is inherently defective and deserving of change. The sole justification of the marriage penalty tax is that it happens to be the law; and that is a sorry justification for a poorly conceived tax law.

Mr. Chairman, the committee has a number of proposals before it which would correct this blatant inequity in the tax code. I believe that the most important goal must be the elimination of the marriage tax penalty and the restoration of a crucial bit of equity to our income tax structure. I urge the committee to select the best proposal and swiftly report it to the whole House, so that we can achieve this important tax reform. Thank you.

Mr. Corman. Thank you, Mr. LaFalce. Mr. Brown, please to welcome you to the committee.

STATEMENT OF HON. CLARENCE J. BROWN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Brown. Thank you, Mr. Chairman. I am a married man and not contemplating divorce. I cannot speak for Mrs. Brown, however. We are still living together, although not as often as I would like to, but it is the job problem.

Mr. Conable. Is that because of the tax status?

Mr. Brown. Well, we haven't decided to break the marriage arrangement based on the tax, but some people do.

And I would like to thank the committee for this opportunity to testify on H.R. 3609, which I cosponsored, to eliminate that income tax penalty on married working couples which has caused them to modify lifestyles in many instances.

As you know, I am the ranking Republican on the Joint Economic Committee. And during my tenure on this panel I have become acutely aware of the many inequities of the Federal tax system and the adverse impact these inequities have had upon individual taxpayers, married couples, and businesses, both small and large.

I come before you today to urge you to report legislation eliminating one of the most serious inequities in the Federal income tax structure, the marriage tax penalty.

Under the current law married working couples are penalized by an income tax system which requires them to pay a higher rate of taxation than two single taxpayers earning the same incomes. This higher rate occurs because the working wife's income is in effect stacked on top of the husband's income and their combined incomes thus fall into a higher combined tax bracket.

This quirk in our tax code was of lesser significance a decade or so ago when few married women held jobs outside of their homes. In 1950, for example, only 18 percent of married women living with their husbands worked outside their homes. Times have changed, however.

The percentage of working married women has increased to 48 percent in 1977 and now for the first time in history more than half of all the married women in America are employed outside their homes. About 21.2 million of the Nation's 40.6 million couples are now paying the marriage tax penalty.

In the next decade, as more women go to work for better pay the number of penalized couples is expected to double.

Inflation is undoubtedly one of the major reasons why many married
omen have taken jobs. Double-digit inflation is a factor with which
l of us have had to contend, and it is making it increasingly difficult
or the average American family to buy a home, to afford the steadily
creasing cost of other necessary goods and services or to save and
vest for their future and the future economic growth of this Nation.

In some cases the wife's income can make the difference between
overty and at least a comfortable existence without any frills. The
esire and ability of an increasing number of women to combine a
reer with marriage is also another legitimate reason why more and
ore women are entering the work force.

Obviously the present system provides a significant disincentive for
onworking married women who need or want to work. It also discour-
ges marriage among single working men and women and in effect
courages cohabitation.

We have seen television shows and news programs to this effect.
nd as a matter of fact, one on 60 Minutes the other evening indicated
at that was one of the reasons for a rather complicated legal prob-
m, because in a taxpayer's sense it was sound for the marriage to be
ssolved.

H.R. 3609 would eliminate the marriage tax penalty in a simple
d straightforward manner by allowing married couples the option
filing as if they were single. In this manner the incomes of the wife
d husband could be taxed separately and at a rate which more fairly
d accurately represents their individual tax liabilities.

Eleven States, the District of Columbia, and 14 member nations
the Organization of Economic Cooperation and Development,
ECD, now permit or require married taxpayers to file individually.

In fact, the United States is the only Nation in the OECD where
e tax cost of the second earner's entry into the work force, not
ways the woman, is greater than that of the first earner.

It is time then for the Congress to recognize that the two-earner
mily is now the rule and not the exception and to respond to this
anging social condition by making our tax code reflect modern times.
nd it is time for the Federal Government to stop taking advantage
inflation and its victims who, as they are pushed into higher and
gher tax brackets, are forced to pay larger and larger percentages
their incomes to satisfy the administration's and the Congress
satiable appetite for more and more programs.

As the Joint Economic Committee has repeatedly emphasized, eco-
mic growth is the key to the rising standard of living for all Amer-
ans and saving is the key to economic growth. To stimulate increased
ving we must eliminate the tax inequities of our present tax struc-
re which are discouraging people from working harder so they can
rn and save more.

The marriage tax penalty is just such an inequity that must be elimi-
ted if we are to get our economy rolling again.

Mr. Corman. Thank you very much.

Mr. Conable?

Mr. Conable. Thank you. We appreciate your statement. No ques-
ns.

Mr. Corman. Mr. Schulze?

Mr. SCHULZE. No questions.

Mr. CORMAN. Mr. Jeffords will be next. Mr. Jeffords, we are pleased to welcome you to the committee.

STATEMENT OF HON. JAMES M. JEFFORDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VERMONT

Mr. JEFFORDS. Thank you. It is a pleasure to be here. First, I want to express the sincere regrets of Mrs. Fenwick for not being present today. As you know, she is ill. I just wanted to express her regrets in that regard.

I also have a statement which I would like to put into the record.

Mr. CORMAN. Your full statement will appear in the record. You may proceed.

Mr. JEFFORDS. I know that many people have appeared before me to express their concern over the problems that are created by the so-called marriage penalty. I want to add my own concerns in that regard very briefly and suggest that there may be ways to remove this inequity by gradually phasing in the ability to file as single people. A gradual approach would avoid any serious drain on revenue.

I can understand the committee's concern at this particular time about reducing revenues substantially when we are trying to balance the budget. But it seems to me that first of all we have an inequity. Second, at this period of time in history, when we have changing concepts of society with respect to the family, Mr. Chairman, it is a very poor policy to have a penalty on the concept of marriage and family togetherness.

I have also noted with some interest Mr. Conable's suggestion for arbitrarily deducting an additional amount from one of the earners. Though that has some merit I don't believe it would significantly resolve the inequities in most cases. I hope that the committee will adopt the proposals which would allow people to file singly in these cases.

Having heard the other witnesses, I just want to add my comments briefly to theirs in this regard. And that would conclude my statement.

[The prepared statement follows:]

STATEMENT OF HON. JAMES M. JEFFORDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VERMONT

Mr. Chairman and members of the committee, I appreciate having the opportunity to appear before you today as a cosponsor of H.R. 3609, to allow optional individual taxation for married couples. I regret that my colleague from New Jersey could not be here today to discuss this important legislation. She deserves a great deal of credit for her hard work on a problem that my constituents have raised time and time again, particularly at this point in the year. Simply put, people don't think it's fair that they should have to pay more taxes when they get married.

The way we presently tax two-earner families has two especially undesirable effects. Through the "tax on marriage," federal policy ends up discouraging marriage and penalizing second earners. The United States is alone among O.E.C.D. (Organization for Economic Cooperation and Development) countries in placing a higher tax cost on a second earner's entry into the work force than on the first earner's entry. Not only is the "marriage tax" contrary to the policy of these countries; it also contradicts important aspects of U.S. policy. Congress has enacted laws which prohibit discrimination against women by em-

loyers, and which encourage employers to actively seek female employees.
Vhen we penalize married women who enter the work force, we take away
rith one hand what we try to give with the other. In addition, the federal tax
ode frowns on two-earner families while increasing numbers of married women
eek employment, and when many families find they cannot do without two
arners in a time of high inflation and tight credit.

If the "marriage tax" fails on the grounds of equity and social policy, it can
e defended only on the basis of its revenue-raising effects. It is important
keep in mind, however, that the marriage tax comes on top of the annual
nlegislated tax increase attributable to inflation. The failure to index personal
come tax rates to account for inflation results in an annual federal windfall.
s you know, the Congressional Budget Office predicts that, with no real growth
xpected in the U.S. economy this year, the entire increase in federal revenues
ill arise through inflation. CBO expects that inflation will raise revenues from
dividual taxes alone by $24 to $26 billion this year. I don't think the Amer-
an public will be impressed if we fail to eliminate the serious inequity created
the "marriage tax" because the federal government will lose $5 to $7 billion
annual revenues, while we reap a windfall from inflation four times that
nount.

In addition to the unlegislated inflation windfall, this year the federal gov-
nment will begin getting revenues from taxing the windfall profits which oil
ompanies will receive as a result of price decontrol. The windfall profits tax
venues this year alone will be double the cost of eliminating the marriage
x. Contrary to my own inclinations, the Committtee has recommended that
e bulk of these revenues be reserved for personal and business tax reduction
ther than for energy programs. Eliminating the "marriage tax" is a rela-
vely inexpensive personal income tax relief measure, and I urge the Commit-
e's support for this proposition.

H.R. 3609 proposes a very simple method of eliminating this inequity. It
ould not make the tax code more complicated. Rather, it would merely do away
th one schedule.

In closing, I would like to raise one final instance of the problems associated
th the federal "tax on marriage." My own state of Vermont provides a good
ample of the second-order effects created by the federal "marriage tax."
rmont bases its state income tax on 27.25 percent of the federal tax that
individual or a couple pays. Through the so-called "piggy-back" system
ployed by Vermont and many other states, the federal "marriage tax" results
a state "marriage tax." By the same token, Vermont's penalty would be
minated if the federal code were to be corrected.

Mr. CORMAN. Thank you very much. Mr. Conable.

Mr. CONABLE. Thank you. No questions.

Mr. CORMAN. Mr. Schulze?

Mr. SCHULZE. No questions.

Mr. CORMAN. Our colleague, Mr. Seiberling, from Ohio.

ATEMENT OF HON. JOHN F. SEIBERLING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. SEIBERLING. Thank you, Mr. Chairman.

Mr. CORMAN. We are pleased to welcome you to the committee.

Mr. SEIBERLING. Well, it is always a pleasure to appear before you
l your committee, particularly on matters as crucial to many people
this is. Many of your legislative considerations are of equal or
eater rank of course.

I wonder, since my statement is short, if I may read it in full, and
n if you have some questions I would be glad to try to answer them.

Mr. Chairman and members of the committee, I appreciate very
ch this opportunity to testify today on legislation relating to the
nparative income tax treatment of married couples, single persons,
l heads of households.

There are two bills on this subject in which I am particularly interested. First, I am a cosponsor of H.R. 3609 introduced by Representative Fenwick to eliminate the so-called marriage tax.

You have already heard expert testimony on how it works and its economic impact, and I won't repeat that here. But I do want to express to you the concern that I have heard from a large number of constituents about this unfair tax burden.

It seems clear to me that our tax laws have simply not kept up with changes in our society. The two-earner couple is the norm now, not the exception. And it is time to change our tax laws to reflect that fact.

I realize of course that correcting this inequity will reduce taxes at a time when balancing the budget is of paramount concern. I strongly support the efforts to balance the budget.

One approach, however, which you might want to consider is a gradual phaseout of the marriage tax. The Fenwick bill permits couples to elect taxation as singles. To phase the bill in we could have a special tax form for several years on which couples could compute their taxes if they were single, and then the difference between their tax as singles and their tax as a couple, which constitutes the marriage tax, could then be made the subject of a tax credit for a certain percentage of that amount.

Now this percentage could be increased each year until the marriage tax is entirely phased out.

So much for my views in brief on that particular problem. The other bill I wanted to discuss today is H.R. 1248, legislation I introduced to permit all surviving spouses to use the married filing joint tax schedule for 2 years following the death of a spouse. Under current law only surviving spouses with dependents are permitted to use this privilege.

The problems which attend the death of a spouse are real and pressing. The survivor faces not only the loss of a loved one but usually the loss of that person's financial contribution to the family.

Moreover, the mortgage or rent does not go down when the spouse dies nor do other expenses such as utility bills. On top of these injuries is the insult, as the surviving spouse sees it, of a callous government forcing him or her to pay a higher tax through the shift from the married filing joint schedule to either the head of household or the single schedule.

Ironically, Congress has extended help to some survivors but not others. Survivors with dependents enjoy 2 years of so-called readjustment assistance in the form of reduced taxes. They are allowed to use the married filing joint return schedule for 2 years after the death of the spouse. But survivors without dependents receive no such assistance. They must shift the following year to the single schedule and pay the higher tax.

This arbitrary distinction is difficult to defend and my bill would eliminate it. And I hope you will also give H.R. 1248 serious consideration, as well as the so-called marriage tax bill.

And I thank you. I would be glad to engage in any questions.

Mr. CORMAN. Thank you.

Mr. CONABLE. I have no questions. Thank you.

Mr. SEIBERLING. Let me also commend Representative Conable for trying to attack the marriage tax problem too. I think his bill would be certainly preferable to no bill, but I think from a logical standpoint if we are going to do this and it is a matter of fairness why not do the whole thing. And if we can't do it all at once, phase it in along the lines I have suggested.

Mr. CONABLE. Thank you. My only theory about that is if a big step is indicated, a small step is not necessarily bad.

Mr. SEIBERLING. I agree. Certainly we need to do something.

Mr. CORMAN. Next we have the panel of David and Angela Boyter, Robert McIntyre, Eileen Thornton, Violeta Hannegan, and Justine Comiskey, Robert and Gail Jamin.

Mr. CONABLE. We will take you in the order in which the chairman read the names. And that means that we will start with the Boyters who have a story to tell, I know.

Ms. BOYTER. Mrs. Byron, our representative in Congress, wanted to be here to introduce us to you today. She was called away but she asked us to please have her introduction put into the record.

Mr. CONABLE. Without objection, it will be put into the record at this point.

[The following was submitted for the record:]

STATEMENT OF HON. BEVERLY B. BYRON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, it was a pleasure for me to invite two of my constituents, Angela and David Boyter of Ellicott City, Md., to testify before your committee today against the marriage penalty. The Boyters have become experts on the marriage penalty through personal experience and have undoubtedly brought more national recognition to this problem than any other couple or organization in the United States.

Ten years ago, the Boyters began to write members of Congress with a request that this unfair tax provision be corrected. Finally, in desperation, they began to take drastic actions to bring attention to their cause. While they will outline for the committee the many twists their lives have taken since 1970 as a result of the marriage penalty, I would like to emphasize to the committee that the Boyters are not alone in their fight to bring reform to this area of our tax code. Over half of the married couples in America pay this tax on marriage. Like myself, over half of the members of the House have either sponsored or cosponsored legislation to correct this inequity. While the Boyters have waited ten years for this day, I am hopeful that these hearings will pave the way for the quick passage of legislation to eliminate the many ill effects of the marriage penalty.

STATEMENT OF H. DAVID AND ANGELA M. BOYTER, ELLICOTT CITY, MD.

Ms. BOYTER. Thank you for the opportunity to appear here today. This is an especially appropriate day for our testimony because if it were not for the marriage penalty April 2 would have been our 14th wedding anniversary.

Since we expect many other witnesses to discuss the technical aspects of the marriage penalty, we will avoid repetition and confine our estimony to our personal experiences and observations.

When we were first married in 1966 we thought it would be until death us did part. Since our incomes were always approximately equal, we gained no tax benefit from our marriage, but we were not penalized either.

The Tax Reform Act of 1969 changed all that and from 1970 to 1974 we paid a marriage penalty. Writing Congress produced no action and often no response, so in December 1975 we divorced in order to file our returns as single taxpayers. We wanted to be married, however, so in January 1976 we remarried.

We divorced again late in 1976 and married again early in 1977. In spring of 1977, the IRS termed our divorces a sham because of our remarriages, and they said we owed them about $3,100 in back taxes. The IRS also said, however, that divorcing was fine with them as long as we lived together without remarrying, so in 1977 we divorced for a third time and have been living together ever since. We are waiting now for a decision from the Tax Court on the validity of our first two divorces.

We took this somewhat drastic action to bring to your attention the unfairness of a tax policy that discriminates against married couples. Such a policy belies the Government's ostensible support for marriage and the family, and it is an unwarranted intrusion on the individual's right to choose a basic personal relationship.

From earliest times, common law has held any contract that interfered with the right to marry to be invalid. Do you think interference is too strong a word?

Over the past 5 years we have saved almost $15,000 in extra taxes by not being married. If we both work until age 65 and receive no future raises in salary, our lifetime marriage penalty would exceed $130,000. Maybe you don't consider that interference, but I am afraid that I believe such a price is too high to pay for legal marital bliss.

Since our divorces began receiving national publicity, we have heard from hundreds of taxpayers from all parts of the country, and the response has been overwhelmingly supportive. Most people in this country perceive the marriage penalty as bad law, perhaps an immoral law; and, like us, they believe that marriage and the family still have a place in American life.

A couple from Maryland sent us the following message scrawled on the back of a postcard: "Here at ages 67 and 65, with 45 years of fine marriage we note with interest your crusade. Know, please, of our respect and admiration for your valiant stand."

A minister from Illinois wrote: "I think your activities are God pleasing and I thank you for them. Peace."

Many people write us about their personal experiences. A couple from Wyoming who married last year wrote: "We supplied enough taxes this year for the Government to buy itself a new car. Last year, however, they only got a 10-speed."

Mr. Boyter. But many people go beyond letters of support. We have sent over 400 letters to people who have asked how to obtain a foreign divorce, and a number have told us about obtaining tax divorces on their own.

People are divorcing or simply not getting married to avoid the marriage penalty, and neither we nor the IRS has any way of estimating how many because most of these people are prudently just not talking.

But we have an idea that such action is more common than most people think. When we went to Haiti for our first divorce in 1975, before the marriage penalty received any widespread publicity, we met a pleasant middle-aged couple who were staying at the same hotel. After we revealed the purpose of our trip, they admitted they had also come to Haiti for a tax divorce.

We recently received a phone call from a young woman from a Middle Atlantic State who said that when she and her fiance realized how much their taxes would rise if they got married, they decided to skip the legal marriage but told their friends and family that they had eloped.

Another couple from the conservative South told us that they had taken the extra step of changing the woman's name to be the same as the man's. Everyone assumed then that they were married. They tied the knot legally when she became pregnant, because they found that, otherwise, the child's birth certificate would say illegitimate. They called us for advice on how to obtain a tax divorce. I ask you, is this the kind of behavior you want to promote?

Each of these couples wanted to be married, but Federal tax policy forced them to conclude that marriage was a luxury they simply could not afford.

The publicity about us has made many people aware that they can avoid significant amounts of taxes by not marrying. Social acceptance of living together has increased to the point where in the circle of typical middle class suburbia that we inhabit most people consider it no more than a minor idiosyncracy.

We can't stress too much that we know that many couples are living together because of the marriage penalty. We believe that if you allow this economic disincentive to marriage to continue the trend may be irreversible.

Moral considerations aside, what will be the effects on people of living together?

First: In many States it is still illegal.

Second: Such couples forgo many legal rights afforded married couples—property rights, inheritance rights, pension rights, estate tax deductions, and so on.

Third: The formal commitment of marriage provides an important feeling of security and stability. Many people have told us that they would be afraid to obtain a tax divorce for fear their spouse would leave. In an increasingly uncertain world, today's tax policy is denying many people even the small comfort of a legal marriage.

We are delighted that so many Members of Congress have recognized that a marriage penalty is not a good public policy and are supporting various legislative remedies. As we understand it, the main objection to eliminating the marriage penalty is that it will cost too much in lost revenue because too many people are affected. It is ironic that when we first complained about the marriage tax in 1970 the Treasury Department responded by saying that too few people were affected for them to consider it a serious issue.

Could someone tell me what is the magic point when enough people are affected for an issue to be serious but not enough that the cost will be too high?

We are talking about correcting inequity and providing equal protection. Compared to the amounts that the Federal Government spends or requires others to spend to provide protection or opportunity for racial minorities, veterans, the elderly, farmers, small businessmen, and other special groups, the cost of eliminating the marriage penalty is simply trivial.

Congress raises our taxes every year without raising a finger as inflation forces us all into higher brackets. Our taxes will be indirectly raised still more this year because of the new tax on imported oil and the windfall profits tax.

Our Federal legislators are providing tax cuts in other areas, such as the proposed $200 exclusion for interest. We do not necessarily oppose such tax cuts, but we believe your first priority should be correcting inequity, such as the glaring inequity of the marriage penalty.

The marriage penalty has provided the Treasury with extra revenue for 11 years; it has had wide public attention for at least 4. The time for legislative remedy is long overdue.

Ms. **Boyter.** Which legislative remedy? First we would like to discuss the legislative remedies we do not favor. These are the tax deduction bills such as H.R. 6203 which would allow a deduction, in addition to the zero bracket amount, for 10 percent of the lower income spouse's wages up to a maximum deduction of $1,000. What is wrong with this approach?

Four things. First it is too complicated. As a CPA I suppose that complex tax provisions just mean more job security to me, but as a concerned citizen I favor simplifying the ordinary citizen's taxes, not complicating them. Many of my clients are already confused by tax credits and adjustments to income that can be taken in addition to the zero bracket amount. Imagine their confusion over a deduction that you can take if you don't itemize your deductions.

Second: The proposals are a slap in the face to women's struggles for job equality and upward mobility. Placing an upper limit of $1,000 or even $2,000 on this tax deduction says loud and clear: "It is OK for you women to work, but just don't be too successful."

Third: The bill will not eliminate the marriage penalty for anybody. In our case our marriage penalty would be reduced from about $4,000 to about $3,600. That is hardly enough to make me rush off to the altar.

Fourth: While not eliminating the marriage penalty at any income level, the bill provides a greater measure of relief for lower than higher income families. Our tax system is already progressive and this bill makes it doubly progressive for two-income families. The Constitution guarantees equal protection for everybody, not just for those below the poverty line, and I believe that all taxpayers should be free to choose to marry, or not, to work outside the home, or not, free from Government interference.

Another legislative proposal would provide for a system of taxing individuals similar to that in effect before 1948. We have no objections to such a solution but you have heard the problems with it from other witnesses.

H.R. 3609 and Senate bill 336, the Mathias-Fenwick bill, is a good compromise, since it totally eliminates the marriage penalty without raising taxes for either singles or one-income families. The principal objection that we hear again and again is that it would be too complicated for families to allocate deductions and exemptions.

Those who raise this argument, be they from the Treasury Department or elsewhere, are obviously unfamiliar with State taxes because many States already have a combined separate filing status; many couples in this country are already allocating their incomes, their exemptions, and their deductions with no apparent trouble. As a matter of fact—let's say it takes an extra 2 hours for me to do my tax return that way. That is a return of $2,000 an hour. If I were only making $5,000 a year it would be a return of $100 an hour. I like those kinds of wages.

H.R. 3609 does not provide an unfair windfall for two-income families. An individual in a two-income family who earns $20,000 would still pay more taxes than an individual in a one-income family who earns $20,000. This individual would smply have the right to pay no more than the single individual who also earns $20,000.

It is true that under H.R. 3609 a two-income family with a combined income of $40,000 would pay less in tax than a one-income family with an income of $40,000. If you have to have a tax difference—this is responding to Mr. Stark—I think this is a more reasonable one.

A one-income family is better off than a two-income family with the same income. The two-income family has to pay more for commuting, clothing, child care, lunches out. They often pay more for social security and for pension plans. It takes 80 hours of effort.

I am not home during the day to shop for bargains, do my housework, meet delivery men, meet the teachers for conferences, and do things to further my husband's career or other things of that type. The one-income family is better off economically and in many noneconomic ways. Nor are two-income families as able to pull up stakes for a transfer to enhance the career of one of them. The two-income family has to make sacrifices and compromises that have many consequences. And we see nothing inequitable in a tax system that recognizes those sacrifices.

Mr. **Boyter.** We would like to make one further argument in favor of legislative action. In our little community in suburban Maryland we used to be considered pretty normal. People would introduce us at parties: "This is Angie Boyter. Angie was president of the community association last year" or "You remember David. He worked on the big hospital fight." No more. It is "You've heard of the Boyters. They are the couple who get divorced."

People come up to us in airports, restaurants, stores, and just about everywhere else and comment on our divorces. They come in and introduce themselves to us; I mean just perfect strangers in all kinds of places.

We have done about 70 radio interviews and appeared on TV shows in 8 cities, as well as national TV. We have been written up in every newspaper from the Wall Street Journal to the National Enquirer.

Yet we have never sought any of this publicity. All of the interviews and all of the interviewers made the initial approach themselves because they are interested in the story of what would make an apparently happy couple divorce three times. And they are sympathetic. We have never had what we consider a hostile story or an interview. The media and the American people are shocked that Congress should have allowed a marriage penalty to exist at all, and they always want to know when will it be corrected.

The nationwide interest in our story should be of concern to you as our elected Representatives, but there is another side of the public's interest that should concern you even more.

We receive considerable encouragement from people who do not pay the marriage penalty and have no interest in our issue at all.

In America today the fastest ways to become a national hero are to hit a home run in the World Series or to fight the IRS.

As one woman wrote, "I just complain; you stand up and fight."

The U.S. tax system is based on voluntary compliance, but whether the compliance is based on patriotism or fear, the U.S. taxpayer can be pushed only so far. Growing numbers of citizens are coming to feel that our tax system is both too complicated and unfair.

In 1948 you convinced the single taxpayers that the system is unfair. In 1969 you added the two-earner income families. If you continue adding complexities and favored groups to the tax code, you will eventually convince the majority of the system's unfairness, and they will feel justified in making their own adjustments.

Needless to say, at that point we will no longer have largely voluntary tax compliance. You may think this is an extreme statement, but I do not believe I am exaggerating.

Since we have become well-known tax activists we have been astounded at the number and variety of people who have contacted us about their own methods of avoiding or evading part or all of their taxes.

Passage of H.R. 3609 will go a long way to convince a substantial segment of our society that Congress is trying to assure that taxes are fair.

We urge you to report this bill favorably to the full House this session where we are confident it will be passed.

If I could just make one last summary, and that is that we have come here to ask for your help on this, but I think that we have demonstrated by our actions that irrespective of what you do there is a way that people can avoid the marriage penalty, and that is by getting divorced, the same as we do.

So you may not really have any choice about the revenue losses. Thank you.

Mr. CORMAN. Thank you.

Incidentally, for the panelists, we will conclude all of the statements of the panelists first and then we will have discussion and questions. Mr. McIntyre is next.

STATEMENT OF ROBERT S. McINTYRE, DIRECTOR, PUBLIC CITIZEN'S TAX REFORM RESEARCH GROUP

Mr. McINTYRE. Thank you, Mr. Chairman. In listening to the testimony today it seems to me that there has been a fair amount of misunderstanding of what exactly the tax on marriage is, or at least an understanding of it very different than mine. Let me explain to you what I mean.

It has been talked about how equal-earner couples pay a heavy tax on marriage, unequal-earner couples may actually get a marriage bonus, and so on. That really isn't true, if you conceive of the tax on marriage, as I do, as a premium for divorce. Because every single married couple in the United States who is now taxable could save a significant amount of taxes by getting a divorce with an alimony agreement to split the income of the partners equally.

Now where did this come from? As you know, it come in 1969 when Congress, which was in the process of repealing the Vietnam surcharge, replaced it with the tax on marriage, which today is the fourth largest revenue raiser in the Federal budget.

There is only one way to eliminate the tax on marriage, if you decide you want to do it. It is not the Fenwick bill, which leaves the tax on marriage, as I have just described it, for about three-quarters of the married couples; it is not the deduction credit proposals that have been discussed. The only way to do it is to return to the system of taxation we had prior to 1969, under which there was only one rate schedule and everyone was taxed on their income under that one rate schedule.

For married people there was an apportionment made to decide how much income each member had. And the apportionment system was what Representative Corman was just discussing a few minutes ago. The system made the quite reasonable assumption that married couples share their income equally. I am not sure how you can make any other reasonable assumption without deciding that either men or women spend more, an assumption I don't think the Government ought to be making.

So what we are recommending, then, is a system of individual taxation, with community property-style apportionment for married couples. It has a number of advantages. It completely solves the tax on marriage. It treats couples with the same incomes the same, so that we don't have the situation, as we would under the Fenwick bill, where some couples will be paying 40 percent higher taxes than other couples with exactly the same income, just because one couple has a 50–50 earnings ratio and the other has 80–20. And it is by far the easiest system to administer.

Now what are the objections to going to the approach of treating everybody as an individual that I have suggested? Well, first of all, the Treasury does not like it. Treasury does not like it because historically income splitting has been a tax avoidance device, at least in the eyes of the IRS.

In fact, the pre-1948 law came up because the Revenue Act of 1916 did not tell us how to treat married couples. The courts decided to use a property interest rule. And they were compelled by the logic of that rule to give special treatment to community property State people.

The conclusion that the courts reached did not have any basis in tax policy; it was an attempt to interpret the 1916 legislation. But all of us who have been to law school and learned the property interest rule have a kind of intellectual stake in thinking it might be right. Unfortunately, it has nothing to do with considered tax policy.

So Treasury's position stems, first, from the fact that they have learned the property interest rules very well, and, second, from the fact that it cost $23 billion to eliminate the tax on marriage. And they don't like either the implication that what they have learned is wrong or the revenue loss, and that is understandable.

The second objection to eliminating the tax on marriage stems from the lobby for single people, who obviously were the ones who succeeded in establishing the tax on marriage in 1969.

Their position at the time, which Congress partially accepted, was that in a typical couple there are two people: a taxpayer and a tax shelter. And it is absolutely unfair, the singles told us, to give much weight to this tax shelter.

Now we all know who the tax shelter was. And we all know what a millenium ago it was when that kind of talk could be engaged in. I will give you an example.

Phil Stern, the liberal tax reformer, has a chapter in his book, published in 1964 and republished in 1972, speaking of the value of the little woman as an asset to her husband in filling out his return.

Well, it is not just his return: it is the return of two married people and they are both taxpayers and they are both spouses, and that is how they ought to be treated.

Singles also argue that married couples enjoy economies of scale that single people don't. Well, we know this is not true in particular cases. For example, we know that probably a majority of single people either have roommates—or soulmates.

And we know for sure that if singles want to have these kinds of economies of scale they can have them. So the married couples have no monopoly on that. And I don't think the tax system should start getting into deciding if people are living their lives efficiently or not.

The only other argument which is made in favor of two-job couples and singles versus one-job couples is that we really want to tax the imputed income of housewives. Since we can't do it directly, the only other way is to give a tax break to singles and two-job couples. Well, this makes some assumptions which are at best bizarre.

First of all, it assumes that two-job couples and singles are far less neat and far less handy than one-job couples. Well, I know from my experience that there are lots of sloppy one-job couples and lots of anal-compulsive two-job couples. And I don't think we can really make a very careful value judgment that more housework is done by the one-job couple. We can, of course, say that there is more potential for doing housework in the one-job couple, but we have never had a tax system that taxed potential income.

The economists would like us to. They absolutely would. If you waste your time smelling daffodils or watching TV when you could be sanding down the boat or scrubbing the floors, they would argue, why so much the worse for you! This is all interesting in theory of course, but it has very little to do with the kind of tax system most of us want.

Finally, let me mention the Fenwick bill. I have suggested it doesn't solve the tax on marriage, because it does not. It still leaves the problem that for most couples a divorce with an alimony agreement would be very advantageous. The Fenwick bill also results in treating couples with similar incomes radically differently depending upon their income splits.

And anyone who has looked at the history of the tax system prior to 1948 has to be appalled at the Fenwick bill. We spent approximately years of income tax administration where half the Tax Court es involved attempts at income assignments between spouses. Some them worked. And that means that under the Fenwick bill, many ples, especially if they have lots of property income, will be able work out schemes to split their income.

Couples with wage income will have a more serious problem, but ll certainly try to find ways to split their incomes. So we will have ystem which favors the people who have substantial property inne and those who hire the right tax consultants.

That is crazy and cannot be administered, and we should not be king at this kind of approach. We think the right approach is to urn to equal taxation of all individuals, with income-splitting aprtionment for married people. And we suggest that that is what the nmittee should be looking at. Thank you.

The prepared statement follows:]

TEMENT OF ROBERT S. MCINTYRE ON BEHALF OF THE PUBLIC CITIZEN'S TAX REFORM RESEARCH GROUP

I. INTRODUCTION

n the late 1960s, Congress enacted two important new tax levies: A 10 percent -on to the corporate and personal income taxes was passed in 1968 to help for the Vietnam War, and in 1969 a variable rate "tax on marriage" was ituted to fund tax relief for higher income single people. The Vietnam surrge was soon repealed, but the "tax on marriage" remains in the law today. pproximately 11 million couples—or 22 million taxpayers—are currently paythe "tax on marriage," as it is usually understood (see chart I). That is, were r marriage contracts to be ignored, the joint tax liability of the partners ld be reduced by more than a petty amount. This group of taxpayers repres over a quarter of those filing taxable joint returns, and includes the mems of virtually all two-job couples in which the lower earning spouse contributes ercent or more of the family earnings.

sing a slightly broader, and perhaps more accurate, definition, the "tax on riage" can be seen to apply to all 40 million couples now paying income taxes. t is, every taxable married couple could cut its tax liability significantly by ining a divorce with a separation agreement to split evenly the ex-partners' ings.

oked at as a separate federal levy, the "tax on marriage" is quite a substanfundraiser for the federal Treasury (see chart II). Its burden on families is e than quadruple that of the seemingly more justifiable estate tax. It raises nine times the excise taxes on tobacco, four times the taxes on alcohol, three s the highway use taxes—actually more than all the federal excise taxes bined. In fact, the "tax on marriage" collects more than all the major funding items in the budget except the big three, the individual and corporate me taxes and social security taxes.

Source of 1979 budget receipts

[Billions of dollars]

vidual income taxes[1]	$195.0
al insurance taxes	141.6
orate income taxes	65.7
x on marriage"	22.9
l excise taxes	18.7
ellaneous receipts	9.2
oms duties	7.4
te and gift taxes	5.4
Total	465.9

[1] ot including the "tax on marriage."

It is our position that the "tax on marriage"—or at least its most significant aspects—can and should be eliminated. We therefore disagree with the position of the Treasury Department that intractable problems in balancing the interests of married and unmarried individuals prohibit a universally fair resolution of the competing interests, and that the best we can do is to adopt some gimmick involving special deductions or credits for two-job couples. On the other hand, we even more vehemently disagree with those, like Representative Fenwick, who would institute a system of optional separate filing for married individuals as a purported "solution" to the marriage penalty. In fact, we think the Fenwick "solution" is far worse than the current problem, and would much prefer maintenance of the *status quo* to its adoption.

Our proposed answer to the marriage tax is a simple one: Undo what was done in 1969 and return to the pre-'69 system of "income splitting" for married couples. This approach combines several compelling advantages: (1) It is the only system which completely eliminates the tax on marriage; (2) unlike either the Fenwick bill or the various deduction/credit proposals, it preserves the important principle that couples with equivalent incomes should pay the same amount in taxes; (3) it is by far the easiest system to administer; and (4) most important, it has the firmest underpinning in tax policy, combining respect for married and unmarried persons as individuals with conformance to the most commonly recognized pattern of marital income-sharing.[1]

The revenue significance of the "tax on marriage" underscores the fact that it is not to be trifled with. In light of the budget austerity we now face, it appears impossible to take steps toward eliminating the penalty this year. But in the context of significant tax cut—or, better yet, tax cut and tax reform[2]—legislation which can be expected in upcoming years (perhaps as part of the tax cuts available from the windfall profits tax), we would hope to see Congress move to eliminate this unnecessary inequity from our tax laws.

II. THE "TAX ON MARRIAGE" AND THE "TAX ON REMAINING UNMARRIED": HOW THEY HAPPEN

Technically, the "tax on marriage" stems primarily from two sources: For couples with below-median incomes, the cause is almost exclusively the fact that the zero-bracket amount—or standard deduction—for a couple is $1,200 less than the ZBA for two unmarried individuals. For higher income couples, the cause is mainly the differing rate schedules for singles and marrieds, which can impose higher taxes on a married person's share of the family income than would apply if the couple were living without the benefit of legal matrimony.

For example, if Jean and Terry each earn $7,500, they will pay taxes on $9,600 of their income if they are married, but on only $8,400 if they choose to divorce (or not to marry in the first place). The marriage penalty caused by this increase in income subject to tax is $251.[3] If Pat and Lee each earn $20,000, income subject to tax would probably not change by marriage, but they would be paying at higher tax rates, leading to a marriage penalty of $906.[4]

Charts III—V show the extent of the marriage penalty for couples with various incomes. We have also included, for the Committee's information, a breakdown of the nominal penalty levels by various income splits. It should be emphasized, however, that the level of the marriage tax does not actually vary with income splits, since every married couple (including those with only one earner) could obtain the benefits of full splitting by divorcing with an alimony agreement to

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[1] Most of the points we make in this testimony are spelled out at greater length in M. J. McIntyre and O. Oldman, "Taxation of the Family in a Comprehensive and Simplified Income Tax," 90 Harv. L. Rev. 1573 (1977). See also M. J. McIntyre, "Individual Filing in the Personnel Income Tax: A Prolegomena to Future Discussion," North Carolina Law Review (forthcoming).

[2] Eliminating the marriage penalty means, of course, increasing the relative tax burden somewhere else—most likely on unmarried individuals. But in a program of real tax reform, in which tax preferences, which disproportionately benefit married people, are curtailed, such politically difficult shifting could be mitigated substantially.

[3] A married couple with $15,000 in income and no children would normally have "taxable income" of $13,000, of which $9,600 is above the zero bracket amount. Two unmarried individuals with $7,500 in income each would have $6,500 in "taxable income," $4,200 of which is above the zero bracket amount.

[4] The assumption used throughout this discussion is that itemized deductions are equal to 20 percent of the average taxpayer's income. When the zero bracket amount exceeds this amount, of course, a taxpayer will not itemize.

eir incomes equally. Thus, in the truest sense, the tax on marriage for
ied couples is that shown for couples with 50–50 earnings ratios.
ip side of the tax on marriage might be called the "tax on remaining
ed." This can be an issue, typically, for unmarried couples with only
dwinner. Such a situation might most commonly arise, for example, when
ner works and the other attends school. It could also occur if one partner
at home doing domestic chores or caring for children, but this pattern
arried couples is probably quite unusual. As with the tax on marriage,
lem (insofar as it exists) is due to ZBA differences in the middle and
ackets and to rate differences for higher income couples.[5]
tax on remaining unmarried" is probably not a significant problem. It
ly for unmarried couples in which one member earns over 80 percent of
ly income, and it is a reasonable guess that the vast majority of such
are married.[6] We bring up the "tax on remaining unmarried" primarily
out that it—and not the alleged "tax on remaining single" discussed
s the converse of the tax on marriage.

OW TO ELIMINATE THE TAX ON MARRIAGE, AND THE ARGUMENTS FOR RETAINING IT

ax on marriage" could be eliminated simply by taxing married couples
h spouse were a single person earning one-half the family income. This
splitting" approach would not be a radical step—it was in effect in the
n 1948 to 1969. Income splitting makes the reasonable assumption that
partners share the total family income equally, and that each individual
herefore has about the same ability to pay taxes as a single person with
family income. Current law, on the other hand, effectively assumes an
plit of about 80–20 (see chart VI), an assumption which seems hard to
n any logical or empirical basis.
s eliminating the tax on marriage, income splitting has the additional,
ortant advantages of:
ng all married couples with similar incomes the same, no matter what
of income or the nominal earnings division between the spouses;
ining a progressive rate structure;[7] and
dministrability.
is no other approach to the problem which satisfies these three objectives.
all these advantages, what stands in the way of establishing a tax system
mpletely on income splitting? Certainly, distributional issues are not
ern; the incomes enjoyed by single and married individuals and those
b and one-job couples are distributed with a similarity which is remark-
charts VII and VIII). The most significant problems, actually, are not
al, but political. They relate to the opposition such a step would generate
Treasury and from advocates for giving preferred status to single
In addition, some economists mistakenly maintain that the tax on mar-
least as it applies to one-earner couples, is justified by so-called "imputed
theories. And finally, there are reasonable arguments to be made in
f retaining the tax on marriage created by the zero bracket amount.

ary's position

reasury's problem with income splitting is largely due to the institu-
ngle from which its tax policy experts approach history. When the
ax was established, the framers did not confront issues like the tax treat-
the family. The Revenue Act of 1916 simply applied to "the entire net
* * received by every individual," offering no suggestion as to how
should be apportioned among family members with potential claims to
sue was soon confronted in the courts, however, and the IRS succeeded

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ample, an unmarried couple in which one partner earns $10,000, and the other
ould have $5,700 of the income subject to tax. If they married this would be
$4,600, saving $198 in taxes. If the working partner earned $40,000, the income
tax would probably not change from marriage, but lower rates would reduce
by almost $1,500.
rate, given society's real interest in maintaining stable family life, there are
ave publicly complained that the tax system can sometimes encourage unmarried
obtain legal sanction for their relationships.
to a flat rate income tax would solve many of the "tax on marriage" problems
price of eliminating progressivity.

in having its position, designed to maximize the revenue but without any basis in considered tax policy, adopted. So the rules developed that wage income was taxable to the person who performed the services, and property income to the person owning (or having the best claim to) the property. Within these constraints, taxpayers worked on schemes, involving trust, family partnerships, and the like, to have income attributed to other family members. Some of these attempts were successful; all of them were attacked as "loopholes" by the Treasury and the IRS.

The biggest such "loophole" in the Treasury's viewpoint stemmed from the fact that the courts, carried by the logic of their "property interest" rule, felt compelled to allow full marital income splitting in community property states, where, it could not be gainsaid, the income of either spouse was, legally and without the use of any tax avoidance device, attributable equally to each member of the couple.

Thus, as a quite nonsensical consequence of the property interest rule, taxes on married couples tended to be higher in the common law jurisdictions. When tax rates shot up to finance World War II and stayed up ever after, the income tax changed from a class tax on the relatively wealthy to a mass tax on almost everyone. And numerous states began to move toward adopting community property laws to protect their married citizens from part of the increased federal exactions. In response, Congress voted in 1948 to allow income-splitting for all married couples, wherever they happened to reside. Although Ways and Means Democrats (for example) congratulated themselves on convincing the majority to make the change, based on "considerations of equity and the elimination of discriminations in the tax system," Treasury saw the congressional action as a capitulation to the income-splitting "loophole." And its opposition to the concept of income-splitting has remained, even in the face of rather compelling arguments that such an approach is actually theoretically correct.

B. The singles' lobby, and the alleged "tax on remaining single"

As noted, the tax on marriage was created in 1969 when Congress created a new tax schedule to provide a rate advantage to higher income single persons. Prior to that time, there had been basically only one rate schedule in the Internal Revenue Code, applicable to "the taxable income of every individual (other than a head of a household . . .)." I.R.C., Section 1(a).[8] In determining the taxable income of married individuals, the code, since 1948, had provided that each partner in a couple was to be treated as enjoying half the joint income. Once this allocation was made, married people were taxed on their individual incomes using the same rate table employed by single persons.[9]

The singles rates were adopted in 1969 in response to protests that the system of allocating income between spouses discriminated against singles. The basis for the claim of discrimination grew out of a comparison between the tax paid by a married couple and the tax on a single person with the same income. Since the tax on a single person was higher than the sum of the taxes on two married persons, the tax system was said to impose a "tax on remaining single." This complaint must be distinguished from the "tax on remaining unmarried" discussed above, where the comparison was between a married couple and two unmarried persons.

The alleged "tax on remaining single" is, of course, the normal consequence of a progressive income tax system. With progressive tax rates, a person with $20,000 of income should pay more in tax than two persons each with $10,000. Under income splitting, a husband and wife with family income of $20,000 are treated as each taxable on their share of the income pool, in this case, on $10,000 each. The total tax on the couple is therefore less than the tax on a single person with an income of $20,000.

Those complaining about a "tax on remaining single" apparently considered a married couple as one taxpayer instead of two, presumably treating one spouse as the *real* taxpayer and the other as the "tax shelter." The mindset which produced this offensive categorization was, unfortunately, rather common even in supposed "enlightened" circles until very recently. Thus, liberal tax reformer Phillip Stern, in his best-selling and influential "The Great Treasury Raid," could refer without a twinge of embarrassment to the worth of "the little woman" as an "asset" of great benefit to "the husband, in making out *his* tax return." [Emphasis added.] [10] Such an approach may be encouraged by the rather unwise phraseology of Form 1040, which has persons filing a joint return list one marital partner as the taxpayer and the other as the spouse. In reality, of course, both are taxpayers (and both are spouses), even if one of the partners provides the source of the entire family income. To ignore the existence of one of the marital partners is to pretend that *two* persons with a given total income are, by the fact of marriage, in the same economic position as *one* person with the same total income—a quite nonsensical assumption. Whether this outlook is ultimately based on outrageous sexism, unabashed self-interest, or mere logical error is unclear. But it is clear that the philosophical position which formed the basis for the 1969 attack on income splitting was bankrupt both then and now, and Congress ought to admit to its mistake.[11]

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[8] Optional tax tables for lower income individuals did make distinctions by marital status, number of dependents, and so forth, for simplicity purposes.

[9] Prior to 1969, Section 2(a) of the tax code provided: "In the case of a joint return of a husband and wife * * * the tax imposed by Section 1 shall be twice the tax imposed if the taxable income were cut in half."

Less militant singles advocates are willing to admit that two cannot live as cheaply as one, but they still maintain that economies of scale typically enjoyed by married persons make them better able to pay taxes than are singles. Thus, a married couple needs only one bed, one refrigerator, and one house. Meals for two are cheaper to prepare per person than meals for one. And so on. Of course, this argument presumes that single people live alone, which means that the preferential singles rates should not be available to unmarried couples or singles with roommates—a large percentage, perhaps a majority of single people.

Ultimately, the economies of scale argument fails because it proves too much. We simply do not want a tax system—or an Internal Revenue Service—which inquires so deeply into how we structure our personal affairs. Rather, a system which taxes our measured economic incomes, leaving to individuals the decision as to how to spend their money and structure their living arrangements, is far preferable.

C. *"Imputed Income"* [12]

One additional argument frequently put forward in an attempt to justify preferential tax treatment for singles and/or two-job couples—as opposed to one-earner couples—involves the concept of "imputed income." One of the unfortunate failures of our income tax system, some economists are fond of lamenting, is its inability to take account of the value of self-performed services or leisure. But, it is argued, we can mitigate this pernicious deficiency by taxing those classes of people likely to have excess shares of such "imputed income" more heavily than those likely to have less of it.

The concept of "imputed income" is elastic enough to include virtually everything people do for themselves, from reading a book to fixing the car, from washing the dishes to raising one's children, from chewing food to enjoying the sunset. Attempts to limit the scope of the idea in a principled fashion to activities relevant for tax purposes have not had great logical success. Focusing exclusively on items that can be purchased in the marketplace might cut out sleeping and chewing, but would still leave shaving, grooming, and gardening. De minimis rules still retain items frequently performed—a year's worth of shaves would cost upwards of $700 if purchased.

Somewhat suspiciously, the proponents for making tax adjustments for assumed levels of "imputed income" have chosen to focus particularly on activities thought to be performed by stay-at-home spouses, primarily wives. As one distinguished paper in this field put it, "Because the housework and leisure of a nonworking spouse is excluded from taxable income, the taxable income of one-earner couples is understate relative to that of two-earner couples * * * [and] single persons." [13]

One must marvel at the elegant way in which this statement finesses one critical problem: the lack of evidence about "housework" levels as between one-job couples on the one hand, and two-earner couples and singles on the other. Even if—as may well be true—many, or most, two-job couples and singles are just as neat as their one-job neighbors, even if many, or most, two-job couples and singles are at least as handy with cars, electrical work, and gourmet cooking as their "traditional family" counterparts, nevertheless the one-job couples clearly have more time to engage in such activities. And if they waste this opportunity by watching TV or smelling the daffodils, why, so much the worse for them. We can still tax their extra leisure—or their potential imputed income.

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[10] Mr. Stern revised and republished his book in 1972, as "The Rape of the Taxpayer." omewhat incredibly, although he found it necessary to rewrite much of the text, chap-er 6, "Your Wife May Be Worth a Million," remained virtually untouched.

[11] Some adherents to the old view still remain. For example, in 1977, Senator Edward Kennedy (D-Mass.) put forward a detailed tax reform plan which included a proposal to qualize the "tax treatment of single individuals and married couples"—by taxing a couple s if it were a single individual.

[12] The points made in this section are elaborated in McIntyre and Oldman, supra note 1, t pp. 1607–1624.

[13] Wetzler, "Marriage and the Federal Income Tax" (1978).

Now this raises some serious questions on its own—treating leisure as taxable would place a heavy burden on small children, retired persons, students, and the unemployed. And the federal income tax has never been considered as a levy on "potential income," although many economists might wish it were so.

When one actually confronts the "practical" approaches advocated for taxing "imputed income," one's fears that this frightening concept might have some relevance to tax policy are mercifully laid to rest. If anything, the schemes seem even more ludicrous in application.

One proposal, for example, is to provide a special deduction or credit for two-job couples (why singles are excluded is not completely clear), based upon a percentage of the earnings of the lower-income spouse. This plan assumes that dollar earnings are a reasonable proxy for leisure time foregone (leisure time, it must be remembered, being a reasonable proxy for "potential imputed income"), a proposition which minimum wage workers might question in light of, for example, hourly attorney fees.

Another approach is to provide a deduction (or credit) for purchases of certain kinds of services which, it is assumed, one-job couples provide for themselves. One of these suggestions which Congress has actually adopted is the credit for child care. But assuming that the purpose of the credit is to make an allowance for the failure of the tax system to tax the "imputed income" from taking care of one's own children, the credit is exceedingly unfair to those without children (who therefore perform no child care services, and have no "imputed income" therefrom). If self-performed child care services are to be treated as "income," the fairest system would seem to be to provide a large deduction for taxpayers without children, and a somewhat smaller one for those with children who purchase child care services (and presumably perform some such services themselves as well).[14]

Similar analyses can be made of other "imputed income" tax proposals, including differential rates. The point is that the "imputed income" argument for higher taxes on one-job couples is so arbitrary in its choices of what to tax and so illogical in its application, that it should not be seriously considered in writing the tax law.

D. The ZBA Problem

As noted above, differences in the zero bracket amount are the primary cause of the tax on marriage for average and lower income couples. This discrepancy could be eliminated by making the married ZBA exactly twice that for singles, but such a step would conflict with one of the stated rationales for the standard deduction—to assure that the poor pay no income tax. The poverty level is a welfare term and is officially defined in terms of marital status. The current ZBA, in conjunction with the personal exemptions, results in a no-tax level of about 15 percent above the 1980 poverty level for a childless couple, and about 10 percent below the poverty level for a single person. If a marriage neutral ZBA—say $2,000 per person—were established, this would reduce the no-tax level to only 83 percent of the poverty line for singles, while increasing it to 130 percent for childless married couples.

Whether this would necessarily be a bad result is debatable. The assumption that married persons have a monopoly on cost-saving arrangements is clearly not true, since single persons can also arrange to pool their resources and share costs. And, in any case, it may be more important for the tax system to achieve neutrality than to foster welfare goals. Nevertheless, it does not seem likely that Congress would be willing to abandon the poverty-related aspect of the standard deduction. It explicitly confronted the problem in the 1977 Tax Act and decided that the tax on marriage created by the standard deduction was a necessary evil. This conclusion is certainly a reasonable one. But it certainly has no relevance to the more significant tax on marriage created by the preferential tax *rates* for singles.

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[14] The child care credit has also been defended as making an allowance for a necessary business expense of working parents. If this justification made sense, of course, the provision should be a deduction rather than a credit. In fact, the child care credit is really a tax expenditure in search of a logical rationale.

IV. THE FENWICK BILL

noted above, Treasury's judgment about possible solutions to the marriage
nay be somewhat overwhelmed by its historical perspective. Supporters of
Fenwick bill, on the other hand, have no such problem. Instead, they are
t on returning the tax system to the pre-1948 regime, seemingly in blissful
ance of the multitudinous problems which existed in these "good ol' days."
ath the surface appeal of their voluntary separate filing approach lurk ad-
strative nightmares and clear and gross unfairness, as ought to be apparent
yone who analyzes our pre-1948 experience.

nwick supporters are willing to jettison the principle, now well-established,
couples with equivalent incomes ought to pay the same tax bills. Thus, under
optional separate filing rule, a couple with an 80–20 earnings split would
0 percent more in taxes than a 50–50 couple at the $10,000 income level, 14
nt more at the $15,000 level, 10 percent more at the $30,000 level, 15 percent
at the $40,000 and $50,000 levels, and so on. Furthermore, couples with sub-
ial shares of their incomes from property (such as interest and dividends)
use all the devices perfected in the pre-'48 era (and all the new ones which
tax lawyers could easily create) to maximize their tax savings at the ex-
of wage income couples. And finally, the "tax on marriage" would still re-
for most couples: It would still pay to obtain a divorce with an alimony
ment to split income. It is hard to conceive of a worse approach to the
iage penalty problem than the Fenwick proposal.

CHART I

	Percent of 1979 taxable joint returns				Approximate percent of ¹—	
	In class		With 2 earners		Joint returns paying "tax on marriage"	2-earner returns paying "tax on marriage"
d income class (thousands):						
than $10	7.6		45.4		31	29
to $15	17.1		53.2		16	30
to $20	19.2		62.0		24	39
to $30	32.3	56.1	66.7	59.7	35	59
to $50	18.3		55.3			
to $100	4.6		34.9			
to $200	.8		28.7			
$200	.2		23.5			
tal (averages)	100.0		57.9		28	48

d on 1974 data, roughly updated. Includes returns with lower income spouse earning 25 percent or more of family

dum:	Percent
ercentage of "middle income" ($15–30,000) returns with two earners	64.9
ercentage of returns with less than $15,000 in income with two earners	50.8
ercentage of returns with over $50,000 in income with two earners	33.7

I.—APPROXIMATE COST OF ELIMINATING THE TAX ON MARRIAGE BY GOING TO INCOME SPLITTING (1979 LEVELS)

[In millions]

	Cost of complete splitting	Cost of splitting on rates only
income class (thousands):		
than $5	0	0
$10	$100	0
o $15	1,790	0
o $20	1,910	$290
o $30	4,190	2,930
o $50	5,600	5,600
and over	9,260	9,260
tal	22,850	18,090

dum:	In billions
st of eliminating tax on marriage just for incomes under $50,000	$13.6
st of eliminating tax on marriage caused solely by rate schedules just for incomes under $50,000	8.8

CHART III.—1980 "TAX ON MARRIAGE," "TAX ON REMAINING UNMARRIED"

[The tax consequences of marriage for couples with various incomes and earnings ratios, expressed in dollars, as a percent of prenuptial tax liability, and as a percent of combined income]

Income and ratio of earnings	Tax change from marriage		
	In dollars	As percent of tax	As percent of income (change in tax rate)
$10,000:			
50–50	+202	+40. 4	+2.0
60–40	+182	+35. 0	+1.8
75–25	+10	+1. 4	+.1
80–20	−85	−10 8	−.8
100–0	−275	−28. 1	−2.8
$15,000:			
50–50	+251	+18. 1	+1.7
60–40	+236	+16. 9	+1.6
75–25	+132	+8. 8	+.9
80–20	+56	+3. 5	+.4
100–0	−280	−14. 6	−1.9
$20,000:			
50–50	+247	+10. 5	+1. 2
60–40	+235	+9. 9	+1. 2
75–25	+188	+7. 9	+. 9
80–20	+132	+5. 3	+. 7
100–0	−394	−13. 2	−2. 0
$30,000:			
50–50	+435	+10. 1	+1. 5
60–40	+367	+8. 4	+1. 2
75–25	+130	+2. 8	+. 4
80–20	−8	−. 2	0
100–0	−918	−16. 2	−3. 1
$40,000:			
50–50	+906	+13. 7	+2. 3
60–40	+778	+11. 6	+1. 9
75–25	+250	+3. 5	+. 6
80–20	+16	+. 2	0
100–0	−1, 478	−16. 5	−3. 7
$50,000:			
50–50	+1, 590	+17. 2	+3. 2
60–40	+1, 464	+15. 6	+2. 9
75–25	+619	+6. 1	+1. 2
80–20	+237	+2. 2	+. 5
100–0	−1, 976	−15. 4	−4. 0

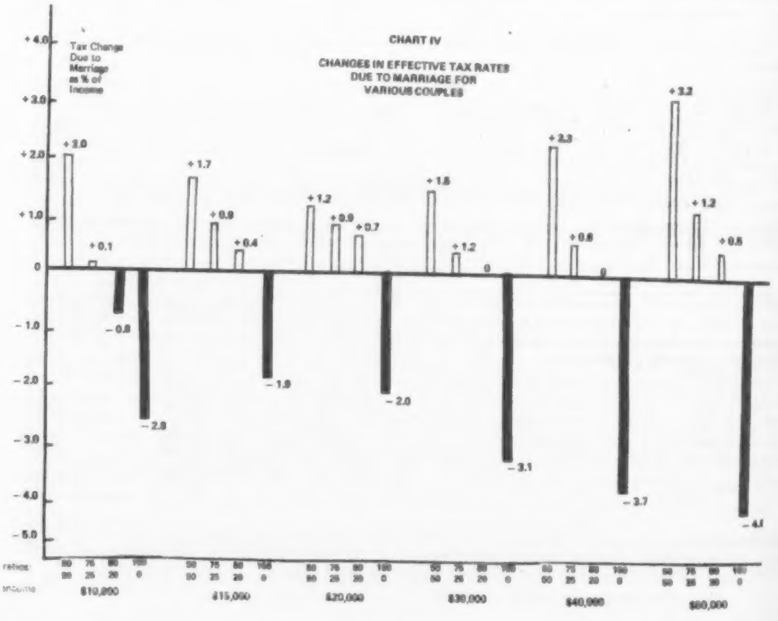
CHART IV

CHANGES IN EFFECTIVE TAX RATES DUE TO MARRIAGE FOR VARIOUS COUPLES

HART V.—CHANGES IN EFFECTIVE TAX RATES DUE TO MARRIAGE FOR COUPLES WITH VARIOUS INCOMES AND EARNINGS RATIOS, DUE TO DIFFERENT RATE TABLES AND DIFFERENT ZERO BRACKET AMOUNTS

ncome and ratio of earnings	Change in tax rate from marriage—Percent		
	From rates only	From ZBA only	Total change
0,000:			
50–50	0	+2.0	+2.0
60–40	−.2	+2.0	+1.8
75–25	−.6	+.7	+.1
80–20	−.7	−.2	−.8
100– 0	−.8	−2.0	−2.8
5,000:			
50–50	0	+1.7	+1.7
60–40	−.1	+1.7	+1.6
75–25	−.8	+1.7	+.9
80–20	−1.0	+1.4	+.4
100– 0	−1.3	−.6	−1.9
0,000:			
50–50	+.5	+.7	+1.2
60–40	+.3	+.8	+1.2
75–25	−.6	+1.6	+.9
80–20	−1.1	+1.8	+.7
100– 0	−2.0	0	−2.0
0,000:			
50–50	+1.5	0	+1.5
60 40	−1.2	0	+1.2
75–25	−.4	+.9	+.4
80–20	−1.2	+1.1	0
100– 0	−3.1	0	−3.1
0,000:			
50–50	+2.3	0	+2.3
60–40	+1.9	0	+1.9
75–25	+.3	+.3	+.6
80–20	−.6	+.6	0
100– 0	−3.7	0	−3.7
0,000:			
50–50	+3.2	0	+3.2
60–40	+2.9	0	+2.9
75–25	+1.2	0	+1.2
80–20	+.2	+.3	+.5
100– 0	−4.0	0	−4.0

CHART VI

"BREAK–EVEN" INCOME RATIOS
(No "Tax on Marriage," No "Tax on Remaining Unmarried")
Or, "How Current Law Implicitly Splits Couples' Joint Incomes"

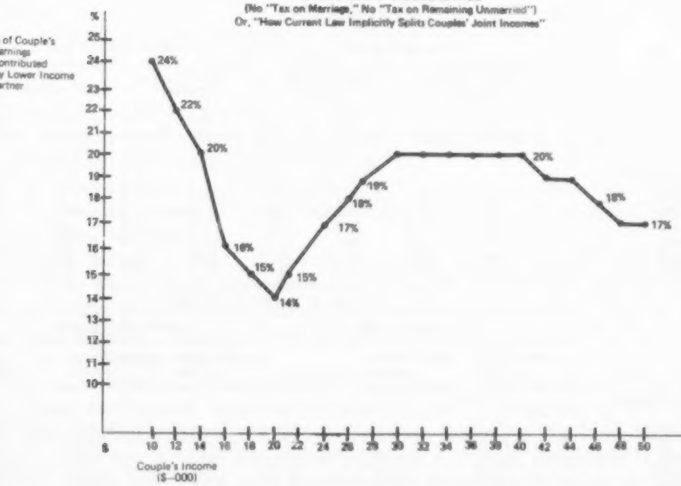

CHART VII.—AVERAGE ADJUSTED GROSS INCOMES, TAXES, AND EFFECTIVE TAX RATES FOR SINGLE AND MARRIED TAXPAYERS,[1] BY INCOME CLASSES

Income class per taxpayer (thousands)	Single taxpayers					Married taxpayers [1]				
	Number (thousands)	Percent	Average AGI	Average taxes	Average tax rate	Number (thousands)	Percent	Average AGI	Average taxes	Average tax rate
Less than $5	4,405	16	$4,120	$110	2.7	6,114	8	$4,025	−$162	(2)
$5 to $10	9,998	37	7,380	617	8.4	29,014	36	7,724	673	8.8
$10 to $15	6,081	23	12,367	1,604	13.0	25,824	32	12,333	1,576	12.8
Over $15	6,296	24	23,056	4,694	20.4	19,100	24	23,703	5,204	22.0
Total (averages)	26,779	100	11,662	1,716	14.7	80,054	100	12,705	1,991	15.7

[1] "Taxpayer" is not the same as "return" in the case of couples, since joint returns represent 2 taxpayers. In this table, for example, a joint return with $10,000 in AGI is treated as representing $5,000 in AGI per taxpayer.

[2] Negative effective tax rate.

CHART VIII.—AVERAGE ADJUSTED GROSS INCOMES IN INCOME CLASSES AND PERCENTAGE OF RETURNS IN EACH CLASS FOR ONE AND TWO EARNER COUPLES (TAXABLE RETURNS)

Expanded income class (thousands)	1-earner couples		2-earner couples	
	Average income	Percent in class	Average income	Percent in class
Less than $10	$7,868	9.9	$8,270	6.0
$10 to $15	12,531	19.0	12,675	15.7
$15 to $20	15,580	17.3	17,615	20.5
$20 to $30	24,685	25.5	24,658	37.1
$30 to $50	36,851	19.4	36,632	17.5
$50 to $100	63,962	7.1	62,174	2.8
$100 to $200	125,009	1.3	116,730	.4
$200 and over	361,968	.4	343,632	.1
Total (averages)	27,192	100.0	24,116	100.0
Approximate medians	21,650		22,700	

CHART IX.—EFFECTIVE INCOME TAX RATES ON INDIVIDUAL PARTNERS IN UNMARRIED AND MARRIED COUPLES WITH 80–20 AND 60–40 INCOME SPLITS

[In percent]

	80–20 earnings split				60–40 earnings split			
	Lower income partner		Upper income partner		Lower income partner		Upper income partner	
	Unmarried	Married	Unmarried	Married	Unmarried	Married	Unmarried	Married
Couple's combined income:								
$10,000	0	0	9.8	8.8	2.4	4.6	7.0	8.6
$15,000	0	1.3	13.2	13.3	7.0	8.8	10.9	12.3
$20,000	2.4	4.3	14.8	15.2	9.8	11.5	13.2	14.1
$30,000	7.0	7.6	18.1	17.9	13.2	13.8	15.6	17.2
$40,000	9.8	9.6	20.9	21.0	14.8	16.1	18.1	20.5
$50,000	11.8	11.8	23.5	24.1	16.5	18.5	20.2	23.8

	Change in tax rates by marriage					
	80–20 earnings split			60–40 earnings split		
	Lower income partner	Upper income partner	Combined	Lower income partner	Upper income partner	Combined
Couple's combined income:						
$10,000	0	−1.0	−0.8	+2.2	+1.6	+1.8
$15,000	+1.3	+.1	+.4	+1.8	+1.4	+1.6
$20,000	+2.1	+.4	+.7	+1.7	+.9	+1.2
$30 000	+.6	−.2	0	+.6	+1.6	+1.2
$40,000	−.2	+.1	0	+1.3	+2.3	+1.9
$50,000	0	+.6	+.5	+2.0	+3.6	+2.9

Note: Lower and upper income married rates are based on schedule 1(d) (married filing separately), adjusted to make total tax rate consistent with regular joint return table.

Ir. Corman. Thank you. Ms. Thornton is next.

ATEMENT OF EILEEN P. THORNTON, IMMEDIATE PAST NA- TIONAL PRESIDENT, WOMEN'S EQUITY ACTION LEAGUE, NEW ERSEY DIVISION

Is. Thornton. Mr. Corman and Mr. Conable, I have submitted tes-
nony to the committee. In the essence of time, I would like to high-
ht some points of my testimony.

Ir. Corman. Without objection, your full statement will appear in
record.

Is. Thornton. I appear today to express WEAL's support for these
nges. We endorse the Fenwick proposal to give married couples the
ion of filing separate returns and compute their taxes at the same
e as single persons. Her legislation gives recognition to the expand-
number of women who are working after they are married and to
need to remedy another inequity in the tax laws.

We feel the time is now to correct this inequity. Tax revision is on
minds of American taxpayers, especially as they feel inflation ac-
erating and the energy crises worsening.

WEAL believes Congresswoman Fenwick's legislation provides a
actical and equitable solution. It would not hurt any group of tax-
yers as it would only affect those who are subject to the marriage
.

It is not a marriage versus single issue, but a question of distin-
ishing between one- and two-earner couples.

WEAL knows that working women are already taxed beyond the
rriage penalty. They pay nondeductible job-related expenses rang-
from clothes for work to meals out to domestic help, health, and
ldcare. Also, they pay for taxes, social security, and commuting.

When one analyzes what the additional income means to the fam-
's budget, it is easy to understand that these extra incomes also mean
ra expenses. One can figure how tax on marriage reduces the value
the second income which in many cases is essential to helping mar-
d couples make ends meet.

In many cases the wives' monetary contribution is needed to bring
family income above the poverty level.

Working wives not only bear the brunt of the marriage tax, but they
the consequences of inequitable conditions in the economy and the
ployment market.

WEAL believes that it is appropriate to remember these conse-
ences as this committee deliberates on the marriage tax proposal.
e are vitally concerned about the persistent earnings gap between
n and women. Women have to work 9 days to gross the same sal-
that men gross in 5 days.

The marriage tax contributes to this income gap by penalizing those
o make equivalent salaries to those of their husbands.

WEAL believes by eliminating the marriage tax the U.S. Congress
removing one of the many barriers to women's progress. This tax
nalty stops marriage and family and prompts couples to divorce
live together. WEAL feels this does not represent the American
y of life.

Changes in the tax laws would clearly help reverse this trend. Last June the U.S. Census Bureau reported that the number of married couples living together has more than doubled since 1970. Passage of the Fenwick legislation would at least eliminate one of the enonomic arguments against marriage.

WEAL calls on the House Ways and Means Committee and the U.S. Congress to demonstrate their support of marriage and family life by banning any tax policy which discourages these relationships. It is unfair for tax laws to weaken these strong American institutions.

We hope that you will take appropriate action with your committee. Thank you.

[The prepared statement follows:]

STATEMENT OF EILEEN P. THORNTON, WOMEN'S EQUITY ACTION LEAGUE PAST NATIONAL PRESIDENT

Mr. Chairman and members of the House Ways and Means Committee, I am Eileen Thornton from Trenton, New Jersey, the immediate past National President of the Women's Equity Action League and currently a member of WEAL's national legislative committee.

As an organization dedicated to enhancing and strengthening women's economic status, WEAL has been vitally concerned about tax reform for a long time. WEAL's legislative platform includes a plank to make tax laws fairer and more equitable for women. Our organization has worked with Congresswoman Millicent Fenwick (R-N.J.) on reform legislation to end the extra tax burden carried by working married couples. WEAL commends the New Jersey Congresswoman for her commitment, determination and persistance in bringing this issue to the forefront. We appreciate and recognize her decisive role in this reform movement.

I appear today to express WEAL's support for these changes. We applaud the Fenwick proposal (H.R. 3609) to give married couples the option of filing separate returns and computing their taxes at the same rate as single persons. Married individuals who prefer to file jointly can continue to do so and single taxpayers would have no greater liability.

Her legislation gives recognition to the expanding number of women who are married and working. It also is a timely correction for the tax inequities that exist for this growing number of dual working households. Tax revision is on the minds of American taxpayers, especially as they feel inflation accelerating and the energy crisis worsening.

When the federal income tax system was set up in 1913, everyone filed separately and paid taxes at a rate determined by his or her own income level, regardless of marital status. Some states had community property laws, which meant that a husband and wife could divide their income between them and pay taxes at a lower rate. This seemed unfair to those who lived in states without community property laws. In 1948, the joint tax table was designed so that all married couples, regardless of the property laws, could split their income and pay less tax.

In those post-war years, most women stayed home while the men were the principal breadwinners. The joint return that rewards the wife for remaining at home works an inequitable hardship on the wife who works outside the home. In today's world, where over half of the women who are married also hold paying jobs, this inequity is no longer acceptable. It is estimated that up to 38 million Americans could be affected by this tax, for over half of all taxpayers are married and at least one-half of all married couples are two-earner households.

WEAL believes that Congresswoman Fenwick's proposed legislation provides a practical and equitable solution to this tax dilemma. It is not a married versus single issue, but a question of distinguishing between one and two-earner couples. Even the deductions for dependents could be shared on a fifty-fifty basis if applicable.

The tax is now imposed on a married couple if the income of one spouse exceeds 20 percent of the income of the other. The more equal the two incomes, the larger the tax burden. It is not just high bracket individuals who are being hit by this inequity. Senior citizens and low income people are also suffering when their dual incomes, marginal as they might be, are taxed higher than a household with the same income but only one wage earner. Many tax payers

ad this a disincentive to get married, for it is cheaper to remain single or live
gether without benefit of marriage.

Today's tax laws should reflect the current social and economic conditions.
ecord numbers of women are in the paid labor force. They statistically earn
cents to a man's dollar. They pay nondeductible, job-related expenses rang-
g from clothes, meals, help at home and child care. From their paychecks
me commuting costs, social security and federal, state and local taxes. Most
these women work because they have to.

In many cases, the wives' monetary contribution is needed to bring the family
come above the poverty level. FORTUNE Magazine's February 25 issue fea-
red a story, "The Upbeat Outlook for Family Incomes," where the influx of
rking wives was discussed. It was cited as a remarkable phenomenon, yet on
ond glance that second income turned out to be critical to the family survival.
st as the wife begins to earn enough to even out the expenses of her going to
rk, the marriage penalty tax enters in and adds an additional burden.

Also women appear to be breaking the usual working wife pattern of mov-
g in and out of the labor force. The 55 percent of all wives in the paid labor
rce (1977) are at work for good. Hopefully, with continuous work records,
se women will get the promotions and raises that have eluded them in the
st.

At present, though, working wives earn an average of $5,100 and provide 27
rcent of their families' income. The persistent earnings gap that exists be-
een men and women haunts the woman who has to work nine days to gross
same salary that a man grosses in five days. The marriage penalty tax
tributes to this income gap by penalizing the women whose earnings draw
r or equal their husband's. It is almost impossible for these women to reap
full monetary rewards of their efforts.

WEAL believes that by eliminating the marriage penalty tax, the U.S. Con-
ss can remove one of the many barriers to women's progress.

Last June, the U.S. Census Bureau reported that the number of unmarried
ples living together has more than doubled since 1970. This statistic can-
be entirely attributed to the marriage penalty tax, but passage of the
wick legislation would at least eliminate one of the economic arguments
inst marriage.

WEAL calls on the House Ways and Means Committee and the U.S. Congress
demonstrate their support of marriage and family by banning any tax policy
t discourages their existence. It is unfair for tax laws to lend themselves
weakening these essential American institutions.

We urge that you respond to the great public support for this reform, as
ressed by the mail and phone correspondence with Congressional offices and
the endorsement of over 220 House co-sponsors.

As inflation spirals, as women are prepared for better careers, as the num-
s of two-earner households grow, the need for this tax reform becomes more
ential. Future projections indicate that the full-time homemaker is an
nomic luxury of the past. We cannot return to the days of old by enforcing
antiquated tax structure on an emerging group of women who are generat-
jobs and the incomes that go along with them. The cost of removing the mar-
ge penalty tax will be borne by the spending of the dual-earning couples as
r numbers increase and their tax burden becomes equitable with other
stituencies.

WEAL salutes the reform of the marriage penalty tax as an important domes-
issue which should be dealt with this year. We urge the committee members
oin us in support of the Fenwick proposal.

Mr. CORMAN. Thank you, Ms. Thornton.

Next, Mrs. Hannegan

ATEMENTS OF VIOLETA HANNEGAN AND JUSTINE COMISKEY, ON BEHALF OF THE NEW JERSEY EDUCATION ASSOCIATION

Mrs. HANNEGAN. Mr. Corman and Mr. Conable, I am Violeta Han-
gan. I teach in the Morris Plains school system and live in Mendham,
. I am here today representing the 100,000 members of the New
sey Education Association comprised of teachers and other public
ool employees.

The NJEA is an affiliate of the National Education Association which has the approximate members of 1.8 million.

Here, Mr. Chairman, I ask that my full statement be submitted for the record, and I will briefly summarize.

We believe the time has come to alter the present tax system which discriminates against working married couples and make it a system which treats all individuals equally.

We represent one of the largest employee groups in New Jersey. Significantly, in our schools there has been a longstanding tradition by which both male and female employees equally share assignment and responsibilities. Long before the heavy push for affirmative action in other industries, ours was a profession in which working women achieved high status and recognition. And contrary to what the old McGuffey Reader says, most of the men and women in our schools are married—and because of the prevailing economic conditions, find themselves in situations where both partners must work full time.

Four years ago a survey conducted by the NJEA in 1976 showed that 60 percent of the teachers were married. The survey also showed that more than 70 percent, or 42,000 of those individuals are married to others where both are employed full time.

Today we estimate that this number has increased tremendously because of the economic pressures.

The present system penalizes married wage earners, whether they file separately or jointly, by taxing them at a higher rate than any other individuals or couples who earn the same total income.

For example, two married individuals who each earn $20,000 would pay $1,697 less under the zero bracket if they were permitted to file as single persons. The tax bite is particularly great if the two married individuals earn comparable salaries.

My husband and I fall into this category. Last year, neither of us claimed any deductions. Even with four exemptions, including the two of us, we discovered we had to pay an additional $1,100. This came as quite a jolt, particularly as we had two children in college, each with a student loan.

The two wage earner family has become a necessity for survival in these financially strapping times. Yet you must remember that the second wage earner also has job-related expenses. The expenses of two married wage earners equal and at times exceed those of two single individuals living together or households with one wage earner. Yet married individuals are taxed more.

For example, people who go to a job rather than stay at home have clothing expenses which they might not otherwise incur. Many teachers live and work in suburban communities where public transportation is not readily available. We must each have a car. The nature of our jobs makes carpooling often difficult.

Professional involvement is more than just the daily commute to work for many teachers. It means traveling for courses, classes, or workshops. It means participating in evening functions at school, many of them voluntary, such as concerts, plays, the PTA or home and school association meetings, athletic games, scholarship and other fundraising activities. It means participating in or attending many county and State education meetings.

We teachers often dig into our own pockets to help make education more meaningful. We purchase materials, equipment, food, books, and er items for classroom projects and parties Many of these expenses not normally reimbursed by our local boards of education, nor are y business expenses which the IRS permits us to claim as deduc- ns.

During the hot and steamy weather, for example, I bring a room and dehumidifier into my classroom. During the frigid days when re is trouble with the school radiators, I pull out my own electric ter so the children can be more comfortable. These extras cut into own incomes.

fy salary and that of many other public school employees have not t up with inflation, which means that our job-related expenses e a bigger bite out of my income. In order to make money, we must nd money, yet in the end we are penalized. As married teachers, it ifficult to understand this extra tax burden.

Our country was founded on the basis that everyone is entitled to , liberty, and pursuit of happiness. Pursuit of happiness means the nt to work hard and honestly for the quality of life important to and your family. It is hard to pursue happiness for your family en the Government is penalizing you for choosing to marry.

Ve believe that Representative Millicent Fenwick's bill, H.R. 3609, ald at least soften the blow of the present tax system by allowing rried wage earners the option—I stress again the option—of filing ingle wage earners.

This bill does not create hardship for any other group of taxpayers. do not want other taxpayers to suffer, but believe that this country ch stresses equality should practice what it preaches.

Thank you for the opportunity to discuss with you our concerns.

would appreciate at this point if I could introduce Tina Comiskey, friend and colleague, who has traveled at her own expense to voice views on this subject.

Is. Comiskey. Mr. Conable, I thank you for the opportunity to ak and giving me an opportunity to express my position on the rriage tax bill. I am a teacher from New Jersey. I am married and I e two children, one in college and the other to attend in the fall.

wish to say I agree with all of these statements made by Mrs. negan. I feel that the fact that married persons pay higher taxes n if they were single is the unfairest tax in America.

Vith the Nation's skyrocketing inflation rate, my secondary income o longer a luxury but an economic necessity.

he tax on marriage reduces the value of that badly needed income. refore I urge complete support for the bill, H.R. 3609. It would e us married couples the option, for the first time, of filing separate urns. The tax situation has become so serious that some couples have orced and have chosen to live together in order to avoid the tax. should encourage marriage and families, not "taxdom."

thank you for this opportunity to express my views.

Ir. Stark [presiding]. Ms. Gail Jamin?

TEMENT OF GAIL A. AND ROBERT S. JAMIN, ON BEHALF OF TAX DIVORCE CONSULTANTS, INC.

Is. Jamin. Mr. Chairman, gentlemen, we want to thank the com- tee for giving us the opportunity to speak out on an issue which is dear to the hearts, and pocketbooks, of 20 million American couples—the "marriage tax" penalty. We hope our testimony today and the material we asked to have read into the record earlier, will clearly illustrate the perverse effects this tax has had on the institution of marriage, and demonstrate the detrimental effects it has had on the financial equality of the sexes.

We're here representing our company, Tax Divorce Consultants Inc., and if we're successful in convincing members of this committee to recommend repeal of this inequitable tax during 1980, our business will fail, for there'll be no market for our services. However, should this committee fail to comprehend the frustration of married working couples faced with paying this yearly tax tribute to the Federal Government, then we are convinced our business will flourish.

Our firm is committed to educating the public to the inequities of our current tax system while offering immediate tax relief for clients who, like us, are tired of broken campaign promises, insensitive Federal judges, and a legislative body that cannot, or will not, come to grips with a problem adversely affecting a large segment of the American taxpaying public.

We recognize that not all problems faced by Government have easy solutions, and we don't expect miracles from our elected officials. However, a reasonable and equitable solution to this problem does exist, one recommended by President Carter's Interdepartmental Task Force on Women, and we do expect this committee and Congress to give it serious consideration.

We firmly believe the passage of the 16th amendment to the Constitution envisioned the establishment of an equitable system of taxation, predicated upon a progressive income tax structure that taxed income and not marital status. We want, and expect, to pay our fair share. But when one's marital status, and not one's individual income level, dictates what that fair share should be, we say "enough."

We cannot understand why our present tax laws persist in defining the taxing unit as the family, thereby accommodating the outmoded concept of a one-wage-earner family to the detriment of a vast majority of our population. Given the fact we are experiencing one of the worst inflationary spirals in our history, it has become virtually impossible for the average family to maintain a basic standard of living without a second income, yet the Federal Government continues to tax this second income as if it were a luxury.

With the family unit being the basis for determining taxes, single individuals who often find themselves supporting brothers, sisters, or parents do not receive equal tax treatment under the law. Widows, widowers, and divorced individuals with family support responsibilities find themselves not receiving equal tax treatment.

And two-wage-earner married couples find themselves not receiving equal tax treatment. The continuance of this situation seriously damages the voluntary tax compliance standards this Nation has grown to expect, and it fosters the belief that our tax system is indeed a disgrace.

Gentlemen, we implore you to return this Nation to the concept of one income, one tax.

Thank you.

[Attachments to the statement follow:]

F PRESIDENT CARTER'S INTERDEPARTMENTAL TASK FORCE ON WOMEN ON THE MARRIAGE TAX PENALTY

SEPTEMBER, 1979

REPORT OF THE ACTION GROUP ON THE MARRIAGE TAX PENALTY TO THE TAX SUBCOMMITTEE OF THE INTERDEPARTMENTAL TASK FORCE ON WOMEN

The Action Group on the Marriage Tax Penalty—Janet Hart (Chairperson), Judith Bartnoff, Sydney Key, and Sam Sanchez—met at the Task Force office on May 22, 1979 and had a number of informal consultations thereafter.

This report consists of two parts: first, an explanation of the marriage tax penalty on two-earner couples; and second, the Action Group's recommended solution to the problem.[1]

I. The Marriage Tax Penalty

The basic structure of our present federal income tax laws provides a substantial subsidy to married one-earner couples at the expense of both single individuals and married two-earner couples. Thus the common view that the marriage tax penalty represents a conflict between married taxpayers and single taxpayers is incorrect. The marriage tax penalty affects only two-earner married couples, that is, couples in which both husband and wife work. Such couples, which used to be the exception, have become the norm; at the present time, two-earner couples outnumber one-earner couples. The tax laws, however, still reflect the traditional view of the American family where the husband worked and the wife stayed at home. As a result, according to the most recent estimates, approximately 19 million two-earner couples—38 million individuals—pay a marriage tax to the U.S. government.

Under the present tax system married one-earner couples get the most favorable tax treatment, singles are in the middle, and, in general, married two-earner couples fare the worst. As a result, if a single working person marries someone with no

best copy available

ome, marriage will lower the tax bill; this is a comparison frequently made by gle taxpayers. But, if two single workers marry (and continue to work), their es will usually be higher as a result of their marriage. The difference between tax bill of two married workers and the total tax bill of the same two workers ney were single constitutes the marriage tax penalty.

The amount of the marriage tax penalty for a two-earner couple can vary atly. As can be seen from Table 1, in general the dollar amount of the marriage tends to increase both with the couple's total income and with the similarity of two incomes. However, the incomes of the two spouses do not have to be equal the couple to pay the marriage tax. A very rough rule-of-thumb is that two- ner couples pay a marriage tax when the spouse with the lower income earns -fifth or more of the couple's total income. When the dissimilarity in the uses' incomes is greater than this, the couple begins to resemble a one-earner ple and may enjoy the traditional tax benefits from marriage.

t is important to realize that, contrary to popular belief, the marriage tax alty does not affect only the so-called "two lawyer" couple, that is, it does not ct only couples in high income brackets. According to a study by Peter Sailer, nternal Revenue Service statistician, at least 13 million two-earner couples the marriage tax in 1974.[2)] Of these 13 million couples, 20 percent had bined incomes under $10,000; 54 percent had combined incomes in the $10,000 $20,000 range; and 25 percent had combined incomes between $20,000 and 000. Considerably less than one percent of the couples paying the marriage tax combined incomes of more than $50,000.

TABLE 1

1979 TAX COST OF MARRIAGE*

For couples who have no dependents and no excess itemized deductions

Wife's Adjusted Gross Income

Husband's Adjusted Gross Income	5,000	10,000	15,000	20,000	25,000
5,000	202	208	150	-30	-219
10,000	208	391	535	579	609
15,000	150	535	903	1,166	1,459
20,000	-30	579	1,166	1,692	2,117
25,000	-219	609	1,459	2,117	2,674

*The shaded diagonal represents different income combinations amounting to a total income of $30,000. When each spouse earns half of this amount, that is, $15,000, the marriage tax penalty is $903. A couple with the same total income of $30,000 but where one spouse earns $20,000 and the other $10,000 would pay a lower marriage tax of $579. The marriage tax for a total income of $30,000 disappears entirely when one spouse earns about $6,000 and the other earns about $24,000. When the spouses' incomes are more divergent, as in the $5,000 and $25,000 example shown in the table, there is an actual tax benefit from marriage (represented by a negative number), in this case -$219.

lr. Sailer's study also showed that the vast majority of two-earner couples in r income brackets paid the marriage tax, that is, they did not enjoy the tional tax benefits from marriage and a joint return. For example, 83 percent l two-earner couples with combined incomes under $10,000 paid the marriage n 1974; 70 percent of all two-earner couples with combined incomes between 00 and $20,000 paid the marriage tax; and 66 percent of all two-earner ies with combined incomes in the $20,000 to $50,000 range paid the marriage By contrast, of those two-earner couples with combined incomes of $50,000 or , 48 percent paid the marriage tax.

loreover, while the dollar amount of the marriage tax may seem relatively l in lower income brackets, it may still represent an enormous increase in a le's tax bill. For example, a couple earning $5,000 each, as shown in Table 1, d pay a marriage tax of $202; this amount represents a 40 percent increase the couple's tax bill as two singles. For a couple earning $10,000 each, the ase is 17 percent; the increase is 24 percent for a couple earning $25,000 each.

he major factor causing the marriage tax is the use of tax rate schedules with rates and zero bracket amounts that differ according to marital status. The rate *schedules* are used to compute one's tax bill on the basis of taxable ne, that is, adjusted gross income minus personal exemptions[3)] and minus ss itemized deductions, if any.[4)] (The tax *tables* are mathematically derived the tax rate schedules for the convenience of the taxpayer.) There are four rent tax rate schedules. The highest rates are those in the schedule for ieds-filing-separately; the next highest rates are in the singles' schedule; third, is the unmarried heads-of-households schedule; and finally, there is the lowest rate schedule, the schedule for marrieds-filing-jointly.[5] The singles' schedule was created by the Tax Reform Act of 1969 in order to reduce somewhat the taxes paid by a single person relative to a one-earner couple with the same income. Until this schedule went into effect, singles had to use the high rates of the schedule for marrieds-filing-separately. Married two-earner couples, however, still must use either the high rates of the schedule for marrieds-filing-separately or aggregate their incomes and use the schedule for marrieds-filing-jointly. Since the U.S. has a progressive tax system, that is, the rate of tax increases as income increases, aggregating the two incomes results in the second income being taxed at higher rates than the first.

In addition to the rates per se, the zero bracket amounts, that is, the amounts of income subject to a zero rate of tax, differ according to marital status. These amounts are $3,400 for a married couple and $2,300 for each single person. Thus even when both spouses work, a married couple has a zero bracket amount of $3,400, which is $1,200 less than the total zero bracket income for two single wage earners, $4,600.

The dependence of a person's actual tax bill on his or her marital status, and, if married, on whether his or her spouse works, can be illustrated by the four possible tax bills a person earning $15,000[6] might have to pay:

1) $1,635 if married to a non-working spouse;
2) $2,236 if an unmarried head-of-household;[7]
3) $2,345 if single; or
4) $2,796.50 if married to a working spouse with the same income.[8]

The marriage tax of a two-earner couple each earning $15,000 that was shown
Table 1 can, of course, be derived from these figures. It is simply the difference
ween their actual tax bill (2 x $2,796.50 or $5,593) and their tax bill as two
gles (2 x $2,345, or $4,690), which amounts to $903. Clearly the present tax laws
vide an incentive for two wage earners not to marry, and for two married wage
ners to divorce and continue living together; it is, however, impossible to
asure the effects of this incentive.

Another question raised by the heavy tax burden on two-earner couples is the
entive provided for a non-working wife to remain at home rather than enter the
ive labor force. The amounts involved can be illustrated by examining the
nge in the couple's overall financial status as a result of the wife's new income.
e entrance of a married woman into the active labor force (assuming her husband
also employed) results in a dramatic increase in taxes. From the calculations
ve it can be seen that when the couple lives on the husband's $15,000 salary, he
l pay $1,635 in taxes each year. If, however, the wife begins to work at a salary
$15,000, their taxes will increase to $5,593. (The wife's additional salary of
,000 results in an additional tax of $3,958.) Thus doubling the couple's income
ltiplies their tax bill by a factor of 3.4. This result occurs because of
regation of the spouses' incomes, which means that the first dollar of the wife's
ome is taxed at her husband's marginal rate of tax, that is, at the tax rate on her
band's highest dollar of income. If the husband earned $10,000 and the wife took
ob also earning $10,000, once again doubling their income, the impact on the
ple's total tax bill would be even greater--the tax bill would quadruple,
reasing from $702 to $2,745. It is, of course, extremely difficult to ascertain to
t extent the tax system keeps non-working wives out of the labor force, but it
tainly provides an incentive for them to stay at home.

II. Recommended Solution

There is an important constraint on removing the marriage tax penalty on two-earner couples; specifically, the taxes on singles relative to one-earner couples with the same income (a difference that was reduced but not eliminated by the Tax Reform Act of 1969) must not be increased. Under the progressive U.S. tax system, there is only one way this can be accomplished; namely, by making a distinction between one-earner and two-earner married couples.

At present, married couples with the same total income pay the same tax regardless of by whom or in what proportions the income is earned. The incomes of the spouses are simply aggregated. In economic terms, however, there is a distinction between a one-earner couple and a two-earner couple with the same total dollar income. The most important reason is that the dollar income of the one-earner couple does not include the quite considerable value of the homemaker's services in the home. And it might be noted that, compared with other industrial countries, the United States is almost alone in adhering to the principle that only the total income, and not who earns it, matters.

The Action Group has concluded that there is no compelling reason for one-earner and two-earner married couples with the same dollar income to pay the same tax, and believes that this principle of spousal aggregation of dollar income should not be taken as a given in the tax system of the United States. Without it, it is possible to have a progressive tax system that is neutral with respect to marriage. In other words, it is possible to have a progressive tax system that has both no penalty for marriage (no difference between the taxes paid by two married age-earners and two single taxpayers with same individual incomes) and no enalty for remaining single (no difference between the taxes paid by a single wage arner and a wage earner with the same income married to a non-working pouse).[9]

Once the idea is accepted, there are several policy options for removing the arriage tax penalty on two-earner couples.

The Action Group has concluded that the best solution would be to tax every dividual's own income on the same rate schedule (same tax rates, same zero racket amounts)[10] regardless of marital status. This solution would be similar to he situation that existed under pre-1948 tax law in the United States, but with the ritical difference that, unlike pre-1948, an individual's own income would, for ederal income tax purposes, be determined without regard to state community roperty laws.[11] It is generally agreed that Congress has the authority to legislate ch a provision. Under the proposed system of one tax rate schedule applicable to very individual's own income, family responsibilities could be accommodated rough the use of extra dependency deductions.

Under any system involving individual taxation of each spouse's "own" income, ere would have to be some means for allocating income from jointly held income roducing property between spouses, and also for dividing deductions between pouses. Generally, with respect to ownership, title should be the determining ctor. Where property is jointly owned or deductible expenses are incurred jointly, ere should be a presumption that ownership or expense is split 50/50. However, it could be possible for the taxpayers to demonstrate that a different allocation should be allowed. For example, if ownership of a piece of income producing property is split 75/25, the income and associated deductions should be allocated accordingly. Deductions not attributable to property should be split evenly unless the taxpayers choose to allocate these in proportion to their shares of earned income.[12)]

The Action Group recognizes that this suggested scheme for property allocation might give couples some leeway for tax planning. However, the Group considers this scheme to be far superior to the current system, under which many couples enjoy the benefits of income-splitting without being required to pay the concomitant costs of transferring title from one spouse to another. This system has, in practice, operated to allow men to retain title to property while, at the same time, "splitting" the income from such property with their wives for tax purposes; this was one of the clear disadvantages to women of the introduction of joint returns and income splitting into the tax system.

Taxation of each spouse's "own" income as an individual does not mean that every married couple would have to file two physically separate returns. The Action Group recommends that for administrative convenience and cost savings both to the Internal Revenue Service and to the taxpayer, married individuals use the same return (hereinafter a "combined individual return"[13)]) even though the spouses would not aggregate their incomes. The tax would be computed separately on each income without reference to the income of the other. (A similar procedure is used in the District of Columbia, where married persons calculate their taxable incomes and tax bills separately in separate columns on the same return.[14)])

The solution of taxing every individual's own income on the same rate schedule
es entail problems of revenue loss and political feasibility. In effect, this
posal collapses the present four tax rate schedules into one tax rate schedule to
used by every individual regardless of marital status. If this new tax rate
edule were to be the present schedule for marrieds-filing-jointly, the lowest of
four existing tax rate schedules (as repeatedly proposed, to no avail, by former
presentative Edward Koch, now Mayor of New York), the resulting loss of tax
enues would be substantial; $25 billion has been suggested as a rough order-of-
gnitude estimate. In general terms, this proposal would not change taxes for
-earner couples but would lower taxes for everyone else--unmarried heads-of-
seholds, singles and two-earner couples. If, however, tax revenues were to be
served by using a new schedule with rates higher than those of the present
edule for marrieds-filing-jointly (for example, the present schedule for heads-
ouseholds or the present schedule for singles), tax rates for one-earner couples
ld be raised, a political impossibility.

The Action Group believes the most realistic and politically feasible method of
eving the goal of individual taxation would be a two-stage approach. The first
e would consist of allowing married two-earner couples the option of being
d on each spouse's own income on the tax rate schedule for singles (same zero
ket amount and same tax rate as a single person).[15] As described above, the
ses would file a "combined individual return" with the tax on each spouse's own
me computed using the singles' tax rate schedule. This first stage proposal is,
ct, contained in bills now pending in the House (H.R. 3609, introduced by
esentative Fenwick and 158 co-sponsors) and in the Senate (S. 336, introduced
enator Mathias and 4 co-sponsors). It should be emphasized that this proposal

does not take away any of the benefits gained by singles compared with one-earner couples in the Tax Reform Act of 1969. Moreover, if this first stage proposal were adopted, since two-earner couples would always have the option of being taxed as single individuals on each spouse's own income, the interests of single and two-earner couples would be identical in effecting the second stage of the transition to individual taxation. The first stage proposal, that is, the Fenwick and Mathias bills, in effect reduces the number of tax rate schedules from four to three by collapsing the schedule for marrieds-filing-separately into the schedule for single individuals. Revenue estimates for the first stage proposal range from $5 to $9 billion, considerably less than the revenue loss from a complete switch to one tax rate schedule using the present schedule for marrieds-filing-jointly. In any event, it is important to keep in mind that the revenue estimates also indicate the seriousness of the problem: the U.S. Government is collecting $5 to $9 billion in extra taxes from about 19 million two-earner couples—38 million individuals—simply because they are married rather than living together without being legally married. Thus the Fenwick-Mathias proposal is a critical first step toward the eventual goal of individual taxation with one rate schedule regardless of marital status.

The second stage in achieving the final goal would be to reduce the three remaining tax rate schedules to one tax rate schedule. At this time, wage earners with non-working spouses could be allowed an extra personal exemption for the non-working spouse to reflect the greater burden on that worker's income. Similarly, if desired, some provision could be made for a partial or full extra exemption for unmarried heads-of-households. The important point is that the personal exemption, not rate schedules based on marital status or spousal aggregation of income, is the appropriate policy tool for adjusting tax bills for family responsibilities.

Implementing the second stage would entail a substantial additional revenue ss. This suggests that the two remaining highest rate schedules should be lowered eadily according to a fixed timetable. The gradual alteration of the rate chedules could be carried out as part of the tax reductions Congress enacts almost ery year.

Finally, the Action Group would like to indicate why it has ignored the all-too- equently mentioned policy option of a deduction or credit for the second wage rner. Such credits or deductions are usually equal to a fixed percent of the rnings of the spouse with the lower income, subject to a specified maximum llar amount.[16] (One example of this approach is contained in a bill introduced Senator Gravel, S. 1247.) The Action Group has rejected the idea of a deduction credit for the second wage earner as unfair and arbitrary. It bears no lationship to, and indeed perpetuates, the differences in tax rate schedules cording to marital status that cause the marriage tax penalty in the first place.

FOOTNOTES

1) Some of the material in this report was contained in "Let's Stop the Tax on Marriage," by Sydney J. Key, The Washington Post (Outlook), January 29, 1978, in Dr. Key's testimony "The Marriage Tax on Two-Earner Couples" before the House Ways and Means Committee on April 5, 1978, and in "The Marriage Tax" by Sam Sanchez, which appears in the Interim Report to the President by the Task Force on Sex Discrimination, Civil Rights Division, U.S. Department of Justice.

2) According to Mr. Sailer's calculations, 5 million two-earner couples enjoyed the traditional tax benefits from marriage and a joint return. For these latter couples, the spouses' contributions to family income were so dissimilar that the benefits from income splitting outweighed the factors causing the marriage tax. See Peter J. Sailer "Using Tax Returns to Study Wage and Taxpaying Patterns, 1969 and 1974," 1976 American Statistical Association Proceedings, Social Statistics Section, pp. 34-40.

3) Under 1979 tax law the amount of the personal exemption is $1,000 per person.

4) Itemized deductions may be subtracted from adjusted gross income (AGI) only to the extent that they exceed the "floor" on itemized deductions, that is, only excess itemized deductions may be subtracted. The floors on itemized deductions are, at the present time, equal to the zero bracket amounts: $3,400 for a married couple and $2,300 for a single person, which amounts to a combined floor of $4,600 for two singles. The effect of the difference in floors on the marriage tax penalty depends on the amount of itemized deductions and their division between spouses. At one extreme, two married taxpayers could subtract $1,200 more of their itemized deductions from their AGI than if they were single; their marriage tax penalty would be reduced somewhat but by no means eliminated. At the other extreme, which occurs when only one spouse has deductible expenses, the effect of the different floors is to increase the marriage tax penalty. See Walter Stromquist "Federal Income Tax Treatment of Married and Single Taxpayers," Tax Notes, June 11, 1979, p. 735.

5) The married-filing-jointly schedule incorporates the idea of income splitting, the source of the tax subsidy for one-earner couples. A married couple filing jointly with a total taxable income of $13,000 (which corresponds to an AGI of $15,000 with no excess itemized deductions) is taxed as if they were using the married-filing-separately schedule to compute taxes on two taxable incomes of $6,500 each, regardless of how the income is in fact divided between husband and wife. This can result in a considerable tax savings, because the United States has a progressive federal income tax. In other words, since the rate of tax increases as income increases, the tax on the second $6,500 of a total taxable income of $13,000 is greater than the tax on the first $6,500. When a married one-earner couple with a taxable income of $13,000 implicitly splits their income by using the married-filing-jointly schedule, both halves of their income are taxed at the low rate applicable to the first $6,500. (Rather than going to the trouble of calculating the taxes on the two $6,500 halves and then adding them up, taxpayers can simply look up the tax for a taxable income of $13,000 on the

schedule for marrieds-filing-jointly, which has the income splitting calculation built in.) For a one-earner couple with a taxable income of $13,000, the tax savings from income splitting is about $840. On the other hand, a husband and wife with identical incomes gain no benefit from income splitting, since their incomes are, in fact, divided equally; thus the tax for their total taxable income on the schedule for marrieds-filing-jointly is the same as the sum of their taxes on each individual income on the schedule for marrieds-filing-separately.

6) The calculations assume that there are no dependents and no excess itemized deductions and that each spouse pays taxes in proportion to his or her share of total earnings.

7) Most people using the heads-of-households schedule would have at least one dependent; this calculation, based on the assumption of no dependents, is hypothetical only. Introducing dependents into all of the calculations would not, however, change the relative tax bills of the different categories of taxpayers.

8) If incomes are equal between spouses, it generally makes no difference whether the rate schedule for marrieds-filing-separately or the schedule for marrieds-filing-jointly is used. If incomes are unequal, it is almost always advantageous to use the rate schedule for marrieds-filing-jointly.

9) The history of the federal income tax as it relates to these principles is discussed in detail in Stromquist, supra note 4, pp. 731-734.

10) It is assumed that, as at present, the floor on itemized deductions would equal the zero bracket amount and thus be the same for every individual taxpayer. If the floor on itemized deductions should in the future be "cut loose" from the zero bracket amount, the Action Group would recommend that the new floor on itemized deductions be the same for every individual taxpayer, that is, it should not be dependent on marital status.

11) A major problem in the pre-1948 system and, indeed, a major reason for the change to joint taxation with income splitting, was the decision of the U.S. Supreme Court in Poe vs. Seaborn, 282 U.S. 101 (1930), which held that married residents of community property states could split their incomes for federal tax purposes. (Under community property rules, half of any married person's income belongs, in effect, to the spouse.) The Court's decision obviously gave married one-earner couples in community property states a great advantage over those in common-law states, with the result that a number of states began adopting community property laws solely to give their citizens this benefit on their federal income tax returns. After passage of the Income Tax Act of 1948, which extended the benefits of income splitting to married couples everywhere, these states returned to their former common-law status. The Seaborn decision was, however, based on the legislatively enacted Internal Revenue Code and not on the Constitution, which means that Congress could change the federal income tax law so that each individual would be taxed on his or her own income for

federal purposes, without regard to the property laws of the state in which he or she resides. In Fernandez vs. Wiener, 326 U.S. 340 (1945), the Supreme Court held that the federal tax definition of property could supersede the state definition for federal tax purposes.

12) A similar procedure could be followed for exemptions for dependents.

13) The term "joint return" should be avoided, since it has become associated with concepts of spousal aggregation of income and income splitting.

14) The standard deduction in the District of Columbia does, however, depend on marital status. See p. 5 above regarding zero bracket amounts.

15) In such a first stage approach, allowing two-earner couples to file as singles should be at the option of the couple; at this first stage there is no reason to remove the tax benefit from marriage for two-earner couples where spouses have widely divergent incomes. It would be relatively easy to have the tax form instructions contain a table showing, for various total income ranges, the income splits at which a two-earner couple would benefit from exercising the option of being taxed as singles. Couples with large excess itemized deductions and/or couples with income splits near the borderline would probably want to calculate their tax bills both ways; the potential tax savings would clearly be worth the extra calculations involved.

16) It would, of course, be mathematically possible to devise a credit based on each spouse's own income and deductions that would equal the exact amount of the marriage tax for each two-earner couple. Such a credit would produce the same result as the first stage proposal discussed on pp. 10-11 above. However, such a credit would be an unnecessarily complicated way to eliminate the marriage tax penalty. By contrast, the first stage proposal, that is, giving married two-earner couples the option of being taxed as singles on each spouses' own income, is much simpler; moreover, not only would it eliminate the marriage tax penalty but it would also reduce the number of tax rate schedules from four to three.

"MARRIAGE TAX" PENALTY CHART*

INCREMENTAL TAX DOLLARS PAID BY MARRIED WORKING COUPLES

HUSBAND'S ADJUSTED GROSS INCOME	WIFE'S ADJUSTED GROSS INCOME									
	$50,000	$45,000	$40,000	$35,000	$30,000	$25,000	$20,000	$15,000	$10,000	$5,000
$50,000	$ 4,394	4,394	4,369	4,314	4,014	3,474	2,699	1,691	379	(1,144)
45,000	4,394	$ 4,394	4,369	4,314	4,014	3,474	2,699	1,711	429	(1,094)
40,000	4,369	4,369	$ 4,344	4,289	3,989	3,449	2,694	1,736	454	(901)
35,000	4,314	4,314	4,289	$ 4,234	3,934	3,414	2,689	1,731	617	(606)
30,000	4,014	4,014	3,989	3,934	$ 3,654	3,164	2,439	1,649	667	(424)
25,000	3,474	3,474	3,449	3,414	3,164	$ 2,674	2,117	1,459	609	(219)
20,000	2,699	2,699	2,694	2,689	2,439	2,117	$ 1,692	1,166	579	(30)
15,000	1,691	1,711	1,736	1,731	1,649	1,459	1,166	$ 903	535	150
10,000	379	429	454	617	667	609	579	535	$ 391	208
5,000	(1,144)	(1,094)	(901)	(606)	(424)	(219)	(30)	150	208	$ 202

*Additional income taxes paid by a married two-wage earner couple with no dependents, taking standard deduction vs. two single wage earners with same income stream. Penalty could be greater if income is comprised of sources other than wages - i.e. interest from savings.

SOURCE: TAX DIVORCE CONSULTANTS INC.
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"MARRIAGE TAX" PENALTY CHART COMMENTARY

As the diagonal line highlights, the incremental dollar cost of marriage (compared to two single wage earners making the same total salary) is greatest when both spouses' wages are equal. For example, when each spouse earns $30,000 their combined income of $60,000 results in a "marriage tax" of $3,634. At no other combined income level of $60,000 is their penalty greater. For when the husband earns $50,000 and his wife $10,000, the "marriage tax" drops to $379, only one-tenth the penalty of the first couple.

If the earnings of both spouses are really dissimilar, say $45,000 and $5,000, the couple actually benefit from marriage, recognizing a tax savings of $1,094. Yet had each earned $25,000, the "marriage tax" would have cost the couple $2,674 or $3,768 more ($2,674 plus $1,094).

It is this characteristic of the tax rate structure perhaps more than any other that has working couples, and women in particular, up in arms. For when the working wife begins to reach financial equality with her spouse, the government abandons all claims to womens' rights by incrementally taxing away her financial success. In the two $60,000 combined income cases illustrated above, the spouse earning $30,000 vs. her counterpart earning $10,000 witnesses an incremental "marriage tax" penalty of 864% ($3,634 ÷ $379). Likewise, there is no justification for two couples earning the same combined income level of $60,000 to be taxed so disproportionately to one another, vis-a-vis two single wage earners.

Contrary to popular beliefs, the magnitude of the "marriage tax" penalty does not decrease at lower combined income levels. When one examines the percent penalty a couple pays when each earns $5,000 for example, their "marriage tax" of $202 translates into a 40% higher tax bill than would be incurred had they each been allowed to pay taxes on their own income. At the other side of the spectrum, two $50,000 wage earners must pay an incremental dollar penalty of at least $4,394 (assuming all their income is comprised of salaries or wages, and hence is subject to a maximum tax rate of 50%), but their percent penalty translates to 13%, not 40%.

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WOMENS' RIGHTS AND ECONOMIC CONSIDERATIONS

The "marriage tax" penalty comes into effect as soon as one spouse in a two-income family earns at least 20% of the couple's combined income. Since it is the wife (in most cases) who earns less than her husband, and current tax law forces her to combine her income with his, the wife's first dollar of income gets taxed at her spouse's highest incremental tax bracket, and her tax bill ends up significantly higher than it would be if she were single. The tax discriminates against married working women regardless of socio-economic circumstances -- the well-educated, highly-trained career-oriented woman as well as the working wife trying to help maintain her family's standard of living -- all are penalized in varying degrees.

The dollar magnitude of the "marriage tax" is greatest for the career woman, for she is most likely to achieve financial equality with her spouse and hence be subject to the maximum "marriage tax" penalty associated with her achievements. (See "Marriage Tax" Penalty Chart.) It seems ironic that at the very time the federal government has been instrumental in helping women overcome discrimination in hiring and promotional practices in the professions, we should witness such blatant tax discrimination associated with the success of these programs. Full equality once achieved should be allowed to be maintained through a system which taxes individuals solely on the basis of income earned, not marital status. Our current tax system is based on the concept of a one wage-earner family and assumes that given an option, the wife would choose to remain at home to care for house and family while her husband pursues his career ambitions. This assumption attempts to foster the old myth of "woman's place is in the home" -- a myth that doesn't stand up to today's realities.

While the dollar magnitude of the "marriage tax" is lower for the non-professional working wife, the percent tax penalty she is forced to pay is often significantly higher than her career-oriented counterpart. For example, when one examines the percent penalty a low income couple pays when each earns $5,000, their "marriage tax" of $202 translates into a 40% higher tax bill than would be incurred had each been allowed to pay taxes on their own income. (See "Marriage Tax" Penalty Chart Commentary.)

Over the past decade, the United States has witnessed one of the worst inflationary spirals in its history, making it virtually impossible for the average family to maintain a basic standard of living without a second income. To help protect their family unit from the constant erosion of the dollar's purchasing power, the American wife has re-entered the labor force in unprecedented numbers. From 1970 through 1978, for example, the number of families seeing both spouses employed outside the home increased by 17%. By 1990, economists estimate that three out of four families will see both spouses employed in the labor market, an increase of 36% from today's levels. Yet the federal government still considers this second income a luxury, taxing it at an unreasonably high rate.

When the extra costs incurred by a working wife are taken into consideration (clothes, commuting and lunch expenses, possible child care and housecleaning costs, etc.), in addition to the higher tax rate on her salary by virtue of marriage, it becomes obvious that our income tax system is in need of a major overhaul. Not only does the present system discriminate against the institution of marriage, it is largely responsible for perpetuating the old myth of married women not being able to function financially on their own. In truth, the "marriage tax," coupled with inflation, effectively limits a woman's option to work in the home or outside it.

While this tax inequity resulted from an oversight on the part of the conference committee who drew up the Tax Reform Act of 1969, it is an interesting coincidence that the members of that conference committee (with one exception) were all upper middle class males whose wives did not work outside the home. Martha W. Griffiths (D, MI), the sole female member of that committee, said in an interview a few years later with THE NEW YORK TIMES, the reason her male colleagues failed to comprehend the bill's impact on working couples was "because none of those men had working wives, so they didn't even think about it."

Also worth noting is the socio-economic composition of today's 96th Congress, in particular the Congressional committees responsible for the initiation of tax reform legislation:

House Ways and Means Committee - 36 Congressmen, no women

Senate Finance Committee - 20 Senators, no women

Full House of Representatives - 418 men, 16 women

Full Senate - 99 men, 1 woman

Unlike the predominance of two wage-earner couples in the U.S. today (approximately 55% of all married women now work), the wives of relatively few members of Congress are employed full time in the work force, and thus Congressmen have no personal knowledge or interest in correcting a very inequitable tax situation. The prime deterrent to reform then is the potential loss of $5 billion to $9 billion in revenue to the U.S. Treasury.

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POLITICAL CONSIDERATIONS

During his presidential campaign in 1976, Jimmy Carter criticized the "marriage tax" penalty as unfair, stating that the "income tax system in this country is a disgrace," and pledging that "we will eliminate tax inequities that adversely affect individuals on the basis of sex or marital status."

In his March, 1977 nationwide radio broadcast hosted by Walter Cronkite, President Carter promised that a major tax reform proposal would be submitted to Congress by the end of September which would include a proposal to end the "marriage tax" penalty. The package eventually submitted contained no mention of this proposal. In fact, in December, 1977 President Carter's Justice Department filed a brief with the Supreme Court saying that "a marriage neutral" income tax is impossible. The Carter Administration's inconsistent position on this issue remains a mystery, given that six months earlier the President had said he favored giving married couples the same tax treatment as single working people living together in order to strengthen the institution of marriage.

One of the "good faith" acts Carter performed after entering the White House was to establish an Interdepartmental Task Force on Women to look into a variety of womens' issues. A September, 1979 report by members of that task force on the "marriage tax" penalty offered a very workable solution to eliminate this unfair tax.

The task force recommended allowing married couples the option of filing their federal income taxes on either the married-filing-jointly tax schedule or the singles tax schedule (an option many states now offer) and reducing, over time, the present four tax schedules to one. This report, if acted upon, would once again make our tax system neutral with respect to sex and marital status. It would also end the United States' unenviable position of being the only industrial nation in the free world whose tax system discourages married women from entering the work force.

Unfortunately, President Carter has done nothing to follow up their recommended solution by actively supporting legislation already introduced in Congress to implement these changes.

Although President Carter is doing nothing to follow through on his earlier promises, there are some people in Congress aware of these inequities who *are* trying to change the law. In the House, Rep. Millicent Fenwick (R, NJ) has introduced a bill every year since 1975 to restore to married working couples their pre-1970 option of filing their income tax returns as singles. As of February, 1980 she had 180 co-sponsors in the House. In the Senate, Sen. Charles Mathias (R, MD) has been championing similar legislation, and as of February he had 23 co-sponsors. No interest has been taken in either piece of legislation by the Carter Administration despite campaign promises made prior to his election, and numerous statements made since taking office. The main objection, it would seem, is the potential loss of $5 billion to $9 billion in revenue to the U.S. Treasury.

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COURT CASES

Individuals around the country have been trying to fight the "marriage tax" in the courts. The Supreme Court, however, has consistently refused to get involved, citing Congressional responsibility to change the tax laws.

In December, 1978 the U.S. Supreme Court, for the second time, refused to review the inequity of current income tax laws and accepted the Carter Administration's argument that in an imperfect world there's no such thing as a perfect tax system. They refused to hear a constitutional challenge to the "marriage tax" penalty.

The Supreme Court's refusal to review the constitutionality of the tax laws came as a surprise to a number of lawyers, since the Court in recent years has been rather vigilant in reviewing legislation that appeared biased against women or seemed to inhibit marriage. In 1977, for example, the Court held legislation which "significantly interferes with" the right to marry must be given strict scrutiny.

In June, 1978 the U.S. Court of Claims upheld the constitutionality of the "marriage tax" stating that "love and marriage defy economic analysis," and saying the Internal Revenue Code provided a unique "opportunity to the young to demonstrate the depth of their unselfishness" by marrying for love, despite the economic consequences.

More recently, in November, 1979, the IRS took Angela and David Boyter of Maryland to U.S. Tax Court contending their December divorces of 1975 and

1976 did not relieve them of their married tax status since they remarried in January of the following years. The IRS is not contesting their post-1976 tax returns because they have not remarried. The case is still pending.

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Press Release

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NEW PROTEST AGAINST TAX INEQUITIES LAUNCHED

GREENWICH, CT. March 17--Divorce, American style, has taken on a new meaning with the creation of the first tax divorce consulting service in the United States.

Gail and Bob Jamin, a professional couple in their thirties, recently obtained what has become known as a "tax divorce," where the irreconcilable differences lie not between the couple, but between the couple and the federal government.

"The sole purpose of our divorce," says Gail Jamin, a public relations specialist, "was to protest the inequities of federal income tax laws which penalize over 20 million married two-income couples from $5 billion to $9 billion annually.

"Up to this point, the public has not been made aware of the inequity of the 'marriage tax,' either the number of couples affected or the magnitude of their individual tax penalty. We're hoping to encourage public awareness of this unfair tax and ask other two-income professional married couples without children at home to join our protest by also obtaining a tax divorce. We plan to encourage this action for as long as it takes for Congress to change the law.

"To provide a forum for this protest, we have formed the nation's first tax divorce consulting service to offer an economical method for such couples to achieve a financially secure divorce. To accomplish this, we have assembled a team of financial and legal consultants thoroughly versed in all aspects of family financial planning, divorce law, and current federal tax code provisions.

"Our company, Tax Divorce Consultants Inc., will offer a comprehensive package of services which will enable a couple to maintain many of the favorable legal aspects of marriage without incurring the substantial tax penalty presently levied on married two-earner couples." (See enclosed "Marriage Tax" Penalty Chart.)

The inequities referred to by Ms. Jamin were created "accidentally" by Congress in 1969, when the complaints of unfair tax treatment of singles reached a peak.

"The Tax Reform Act of 1969 created a new set of tax schedules that somewhat eased the income tax burden of singles ," explains Bob Jamin, a Certified Public Accountant and planning consultant. "However, in attempting to reduce one set of tax inequities, Congress inadvertently created a significant tax penalty for the married two-income couple.

"With today's woman taking a much more active role in business, the two-income couple is no longer a rarity. In fact, it's estimated that 55% of all married couples see both spouses employed outside the home, and their number is growing yearly. Yet the total federal taxes such couples are forced to pay by virtue of being married is often significantly higher than each individual would have to pay if they were single. Two $25,000 married wage earners, for example, would pay a 'marriage tax' of $2,674, or 24% more than they would if they were single."

"In many instances," adds Gail Jamin, "the wife tends to earn less than her husband. Yet under present law, the closer her salary gets to her husband's, the greater her tax penalty for achieving financial equality. The system is not only unfair to working married couples, it is most unfair to the working wife."

"Getting divorced is the only legal method available for couples to avoid paying this unfair tax on the institution of marriage," says Bob Jamin. "But a tax divorce without proper planning can result in the loss of legal rights and have adverse financial consequences that will far exceed any benefits gained. For example, the death of either party after divorce, or the unilateral decision of either party to truly dissolve the relationship, could find the remaining individual without legal recourse to the assets of his or her former spouse. Tax Divorce Consultants was conceived as a vehicle to eliminate such uncertainties for couples contemplating this form of protest."

For a single fee, Tax Divorce Consultants will plan and make all arrangements to accomplish the divorce by providing:

-- An in-depth financial analysis to ensure maximum tax benefits;

-- Necessary property and insurance transfers;

-- A full package of legal services which will include the drafting and execution of comprehensive wills, separation agreements, the filing of court required documents, the engagement of a local attorney to represent the client in court and, where necessary, the booking of all travel and court arrangements for divorce proceedings in foreign jurisdictions;

-- A "palimony" agreement to protect the rights of both parties in their post-divorce living arrangements; and finally,

-- Reciprocal powers of attorney for both parties, allowing each to act as agent for the other in case of physical or mental incapacity.

"Our aim," says Bob Jamin, "is to provide the mechanism, at a reasonable cost, for others to join our protest. That's why we plan to charge a single fee for all our services. It will be substantially lower than the costs which would be incurred by individually seeking out the necessary expert services required to properly effect such a tax divorce. Most of our clients can expect to save two dollars on their federal income taxes for every dollar spent for our service."

"Our intention," adds Gail Jamin, "is not to avoid paying our fair share of taxes, but to avoid paying more than our share. Tax Divorce Consultants is probably the only company formed whose ultimate aim is to put itself out of business.

"According to the findings of a recent Presidential task force assigned to study and make recommendations for eliminating the 'marriage tax,' the only real issue delaying its repeal by Congress is the $5 billion to $9 billion annual revenue loss to the U.S. Treasury. Until such time as the estimated 20 million American couples affected by this inequitable tax situation make their voices heard in Washington, there is little prospect for reform. In the interim, Tax Divorce Consultants will provide the mechanism for couples desiring immediate tax relief to achieve their objectives. For couples not prepared to take such severe measures to voice their protest, we strongly urge them to refuse to support any Congressional or Presidential candidate not committed to the complete elimination of this unfair tax burden."

Tax Divorce Consultants will concentrate its services in the New York tri-state area, but is prepared to handle clients in any major metropolitan area. You can get more information by calling or writing Tax Divorce Consultants Inc., Box 4178, Greenwich, CT 06830, 212-838-9520.

Mr. STARK. Thank you. Mr. Jamin, do you have a statement?

Mr. JAMIN. No.

Mr. STARK. But you agree with Mrs. Jamin's statement?

Mr. JAMIN. No question about it. Yes, absolutely.

Mr. CONABLE. Thank you for your testimony. I think this perhaps oversimplifies it. I know Ms. Thornton said something about how the Fenwick bill would hurt no one.

Ms. THORNTON. That is right.

Mr. CONABLE. It would involve, if it were used with total allocation of income, the highest deductions to the highest wage earner, the loss of $10 billion revenue which would have to be made up from some source, assuming the Government continued to provide goods and services it normally provides. I don't want to get into that argument, of course, but presumably then it would be paid in greater degree by single people, were the Fenwick rule to be adopted. I acknowledge that we might choose to raise taxes in some other way than by increasing the taxes on single people simply by redistribution directly. But that argument is going to be used against us of course if we go that route.

Do you have any comment about that sort of an argument?

Ms. JAMIN. I think it is also important to keep in mind up to 38 million voting taxpayers have been affected by that inequity and they deserve your attention too.

Mr. CONABLE. Everybody feels they deserve attention. By shifting the burden one way or the other, we create the demand for a different type equity. That is one of the difficulties we have here in trying to allocate the burden among taxpayers. I acknowledge that repeated attempts to assess the tax burden by marital status has resulted in a rather interesting public policy toward marriage that most people would not approve of were they as familiar with the problem as you folks are.

Ms. JAMIN. I wanted to comment. It is predicted by 1990 three-quarters instead of half the married women will be working, so that this penalty will certainly increase if something is not done about it.

Mr. JAMIN. May I make a response to your question. I understand that her attempt is not to increase taxes for anyone or any class of citizens, but to eliminate a tax inequity which I think Congress realizes was created by mistake. One can offset the loss in revenue by the continued inflation that is driving more people into higher income brackets. Hence, if you ask how are we going to offset the revenue loss, let inflation take its natural course and utilize it, to offset Federal moneys lost by eliminating the marriage tax penalty.

Mr. CONABLE. You have to make assumptions in this business and one is that the Government will continue to spend what it is spending and that in some way we will have to make up any reduction in taxes for one group in some way. I dont' mean to make too much of that. The issue of an appropriate public policy remains outstanding and that issue with respect to marriage is increasing public concern simply because of the feelings somehow that the Government is prejudiced against marriage, not only as a result of some of our welfare policies but as a result of some of our tax policies. That is what we are talking about today. Thank you.

Mr. STARK. Are there any other witnesses?

I wanted to thank the witnesses. I am sorry I wasn't here to hear all of your testimony.

Mr. CONABLE. Let me also say we apologize for the attendance of the committee today. It is understandable when the Congress unexpectedly adjourned yesterday. The rush for the exit was notable.

Mr. STARK. Everybody but the most popular Members went home to campaign for reelection.

Mr. CONABLE. It is a wonderful explanation and one I am sure is accurate. It is unfortunate that we had planned this for a time when we expected everyone to be here and found as a result of unexpected developments in the schedule that the committee has evaporated along with the rest of the Congress.

I want you to understand that the record is the important thing here, that even if the Congress were around and slugging its way through a lot of wonderful legislation over on the floor the chances are we would still have less than perfect attendance here. The record is the thing we rely on. Your attendance for that reason has not been wasted. You are not wasting your sweetness on the desert air.

We appreciate your coming and want you to understand the conditions which have resulted in this bizarre collection of members to hear you.

The Stark-Conable coalition is now one of the more notable coalitions.

Mr. STARK. Those of you who were here this morning heard me comment on the fact that in the process of writing this tax bill, we are expected to comment on the desirability of being married or not being married, a matter in this committee on which you would find a wide, I am sure, diversity of opinion. But the problem is—addressing something that Mr. Jamin mentioned—is that we do have some preference now in the law and if we change that preference we are apt to hear screams from those people who enjoy an advantage, and obviously plaudits from those whose disadvantage is alleviated.

I am quite sure that we will do whatever really is politically most popular. Congress is never courageous in the even years and it is not usually courageous in the out years, but we do actually respond. In other words, if there is an overwhelming majority of the people in this country who feel that to live together and be unmarried is not an American way, we probably are not going to do anything in the tax code that would make it economic for unmarried couples to live together and get some kind of tax advantage.

You just accept that. If a great majority of families feel that being a homemaker is the most important part of one partner to a marriage's life—and it would be that group by the way that would have their tax advantage lowered if we made any changes, relatively lowered—I am not sure what the politics of that are.

I have heard the testimony that there are more and more two-earner couples. There has certainly been a change in family lifestyles since I was a child and I am sure there will be more changes. What I am getting at is the thing I have asked other witnesses today. This committee won't do anything very unusual in setting any standards for lifestyles or morality or family relationships.

Mr. Conable. I want to take a little exception to your definition of r craven collective here. I do think there is a point in what he says ugh, that Government is a terribly conservative institution and we d to change our thinking, like the tax laws which are sensitive and ry quite a bit of burden in our society, with great difficulty.

On the other hand, what the people think is real is important. If y still think the typical family is a one-earner family with two chiln—even though only 7 percent of the population now is part of h an institution—then our accommodation to change will tend to in the face of that myth. That is one of the things we are up inst here and one of the problems of Government constantly, since s such a conservative force; trying to keep up with social change have policies relevant to life as it is lived and not life as we think lived.

Ir. Stark. My question to the witness really is, what kind of a ority list should we work from? This is something I would apprее if you would take a moment some time after this hearing and p us a memo or a note. Sooner or later we have to make some deons as to who will be helped or hurt. There is no way we can make come out without taking away somebody's relative advantage or ing to somebody's relative disadvantage. Even if we go to a come allocation of income to the earner and disregard marriage that be a disadvantage to those one-earner couples who for so long e enjoyed the splitting of income.

hey will be complaining to us if we change that. My question is d on one-earner—two-earner or couples with children. How would rank sort of in absolute order who we ought to help most. I would gine that most members of this panel would say we ought to give preference to married couples as opposed to unmarried couples g together but maybe you wouldn't. Or maybe we ought to give dvantage to couples with children because they have a greater omic burden. I have suggested maybe we give one-earner families eference to two-earner families because jobs are scarce.

nere are economists who can argue quite readily that is not a good omic argument. It might be a good political argument. I would be ous if any of you care to comment now for the record or if you d submit it later, what do you think ought to be the public policy, Federal policy as how we rank using tax dollars, to subsidize or ubsidize those groups that we are discussing.

. McIntyre. In the testimony we gave we proposed a solution that hought solved the problem perfectly.

. Stark. What do you do with five-unit communes like you and w up in. Do we allow five people to have a tax marriage of connce split? Do I go shopping for four poor roommates when I a lucky year?

. McIntyre. I don't think society allows you to marry that many.

. Stark. In San Francisco we have flexibility.

. McIntyre. When you talk about children in a house the argu- about allocating income to children makes sense to me. You can simply with a system of deductions. The current system, in fact, s much like an income-splitting system. We might amend the ation levels slightly to ones that seem to make rough sense; that is, about a fifth of the family income to the first child and less to the others, phasing down as income increases. In terms of the question you asked about priorities among groups, our proposal would treat all the couples the same, and would treat all the individuals the same.

But single people would pay higher taxes under this proposal relative to their current advantage, and so would unmarried couples. However we have a complementary proposal to solve that problem politically. It is called tax reform, and if you eliminate some of the preferences from the code which disproportionately benefit married people, you can end up with a virtual wash in respect to relative tax burdens.

You also end up with a lot more justice.

Mr. Stark. You and I have been on the side of that issue for a long time and we have been losers for a long time. I concur with you.

Mr. McIntyre. This is an argument for doing it.

Mr. Boyter. I think if you have to make your hierachy—if it were up to me I would put the two-earner couples at the top of the list, not because I am one of them but primarily if you think about it these people are mostly in the poorest segment of the economy. These are the people that are all working for the same reason that everybody works. They absolutely have to, so this burden falls very heavily on them. We can say one of our priorities is the progressive tax system.

What we give away on one hand we take away with another.

Mr. Stark. I think we could resolve that if we took the median family income and we split the issue and said all the families at median or below could be treated the same. The major part of our taxes I suppose is paid by that group. Then you get into the upper income people and the argument does not hold as well. But we have been able to deal with that. In other words, there is a long-term Government policy that we have a progressive tax so that is pretty much established.

But I always thought we give this splitting benefit to married couples but that has been under the assumption most of those only had one earner. Now that has changed in recent years.

Mr. McIntyre. It doesn't have to be under that assumption. You can assume splitting happens in almost all couples, just as it does in California by operation of law. My experience is that it does, that, even when couples isolate portions of their income, once they pool rent and food it doesn't matter what they do with the rest. You have a close enough split that the benefits of their total income are shared quite evenly; the split is at least as close as 60–40.

By the way, it is true there are a lot of two-income families, but the majority of the people with a tax problem are in the $15 to $30 thousand range.

Mr. Conable. We are having a nice tete-a-tete here but I do want to say the poorest people in America are the one-parent families, generally not the married couples both of whom are working. They tend to be in the lower income level and more and more women are having to go to the work market in order to eke out the family budget, partly for that reason, partly because it is more acceptable.

I do want to point out contrary to what Ms. O'Neill was talking about, that taxes are not necessarily the dominant force in this area.

We had a lot more women at home and not working at all during the Victorian era when we didn't have any income tax. Social custom has a great deal more to do with it than taxes.

Mr. **Hannegan**. When you talk about the one wage earner or the two wage earner for the married people I would like to bring out a point that a lot of the married women who are out working today—I know I have come in contact with it myself—have at some time during the course of their marriage been the sole wage earner because of the fact that their husbands have been ill or out of a job, or both. They have had to go through a trauma which the emotional impact on them stays forever. They do not take their job lightly at all.

Their job is very important and when the two of them are again working there is something very faithful remaining. Those bills are there; still there. Even though their income may be a little higher, there is a lot to pay back. At that point, perhaps, there could be children who have to go to college, and their house seems to be falling around their ears with needed repairs. Therefore, although the income is better they have to make up for much.

We have to remember the spirit of two people working to make one wage, and I think we have a terrific group of people in this country who do that.

Ms. **Boyter**. There is another objection to that, Mr. Stark. Another point Mr. Stark made in developing his priorities with which I do not agree.

Mr. **Stark**. I am not sure I agree with those priorities either but I used them as categories and as a possibility. I don't want to set them. I would like to find out what people think about it.

Ms. **Boyter**. I believe most Americans today feel that the couple themselves should have the opportunity to decide whether the best thing that mom can do for her family is to be there when the kids get home from school or have a better neighborhood for the kids to come home from school to so I don't think this is the attitude of the majority of American families today.

I don't think you have to worry too much about your votes should you decide in the other direction but another point you made this morning was that in a time of high unemployment perhaps it is a good idea to encourage the women to stay home.

Mr. **Stark**. Or the men.

Ms. **Boyter**. One person in the family. Were it not for the women n the work force today we would probably be in a worse recession han we are. If you say we are about to enter one. A lot of the unemployment today is by people who have an employability problem. The women of America are not taking jobs away from employable men for the most part.

Mr. **Stark**. I have no quarrel with that. I am just using my list this morning as the example and I hope I stated it clearly for fear of the mail I will get over the next month. That certainly is not my priority. would avoid setting those. I think the Harris poll might be a better way to find out what the American people think in terms of how they erceive they want to be assisted. That is why in the end we will react more slowly, as Mr. Conable pointed out, than many of us might like.

I am curious to know what your priorities would be because I do think that the fact the Tax Code means that you can't treat every group exactly alike—if we follow Mr. McIntyre's plan we are still going to cut into some families who now enjoy sharing of splitting income because they have one job and they are married. If we make a change, their relative advantage may go down.

Ms. **Boyter.** This country was built on the old Protestant ethic of working hard and working for your family and based on that good old-fashioned American tradition I think the two-earner family deserves a break because we have all the work to do that a one-earner family has to do and we go out and work 80 hours a week.

Mr. **Stark.** I have no quarrel with that. As a practical matter I have been in every one of those categories that I mentioned this morning at one time in my life and I have enjoyed them all equally as well. I have a broad range of experience and I have honestly no predetermined preference but I do think that people in this country do and we are going to hurt some relative to others or help some relative to others. That is our problem.

Ms. **Boyter.** As you know semantics are important in these things. I think if you report to your constituents you have repealed the marriage tax you won't get too many complaints.

Mr. **McIntyre.** That's a perfectly silly statement. Remember, what we did in 1969 was lower the singles' rates. We got a lot of complaints. In fact, that's why everyone's here today.

Mr. **Corman.** Mr. Jamin?

Mr. **Jamin.** I don't know if we can answer your question, Mr. Stark, as to what priorities are most important, but if we had a tax system that was neutral with respect to marital status, where taxes were paid on one's individual income and deductions were based upon actual family support responsibilities we would encourage continuance of the family unit, be it the widow with three children, or the husband and wife without children, or the single person supporting aged parents. Then, it would be up to them as Americans, as individuals, to decide if they desired to enter the labor force. In this fashion we would not be discouraging the formation of the family unit, however you want to define it, and credits or deduction based upon actual, not artificial, support responsibilities would become the rule.

Mr. **Stark.** I have no quarrel with that. The problem is I think there would be a lot of people who are for instance now enjoying income splitting who——

Mr. **Jamin.** Yes, there will be $100,000 a year executives who have wives that work but they are the minority in terms of taxpayers.

Mr. **Stark.** I suspect you are right. They may, however, as I indicated this morning speak with a voice that would only be exceeded by the oil company lobbyists and that is a pretty potent force.

Mr. **Jamin.** I would like to take that to the ballot box, if we had the opportunity.

Mr. **Stark.** I think you are right, but I am not sure that you would have a majority of votes in Congress.

Mr. **Jamin.** That is why the Presidential commission said let us not get into that kind of contest. Let us not have the tax cut offset by a tax increase. Let us first eliminate, in stage one, the marriage penalty so married couples who both work are at the same relative disadvantage—in terms of singles—so they are no longer at odds with single individuals and then let us gradually move over a period of 5 or 10 years to one tax table where you reduce that single's tax burden down the married one-income family units.

In this way, married couples who have only one income will never get penalized.

Mr. Stark. We could raise the revenue, if you could get together with Mr. McIntyre and he would sponsor the bill to raise the revenue that you would lose. I would go sponsor it.

Mr. Jamin. Congress votes a tax cut every 2 or 4 years. I am saying over time make a commitment.

Mr. Stark. All I am saying is the empirical solutions to the problem, mathematical solutions, the tables, all become relatively simple if we can cut through and have a clear list of priorities in terms of family units, whether it is to be two-earner couples or one-earner couples or couples with or without children.

Once that is established whether we do it in this committee or it is done by plebiscite or by popularity poll, once that is established the rest is strictly dealing with lost revenue in phasing in revenue changes and moving toward evening it out. We have no problem. It is a political problem, wherever it is, offending groups who will see that their relative position is ignored.

Mr. Jamin. As David Boyter pointed out that problem may go away on its own. While I am not convinced that 20 million married couples will decide to get divorces to avoid this penalty, I think there are a lot of people out there, who upon seeing inaction on the part of Congress because we can't decide what our social taxing priorities should be, will consider taking unilateral action on their own to eliminate this penalty, via divorce or never marrying in the first place.

They are hoping these hearings will generate a tax cut in the year when things are very rough.

Mr. Stark. I find less objectionable personally—in other words somebody who wants to run to the Bahamas and get a quick divorce and get remarried to me is far less objectionable than some of the tax avoidance schemes I see perpetrated by people with a lot of income they are trying to shelter.

Mr. Jamin. It is a sad state of our society when we encourage people to get divorced to keep from paying taxes.

Mr. Stark. It would help to get something in the record about priorities; and I yield back to the distinguished chairman.

[The following was subsequently received:]

Additional Information Furnished By Robert S. McIntyre, Tax Reform Research Group

Congressman Stark raised a number of questions at the hearing about who should and would gain and lose from reform of the family taxation rules. He also noted that it makes sense to look at all the proposals as revenue neutral, that is, tax cuts for one group being balanced by tax increases for others.

To assist in the discussion, we have prepared the following chart, which shows the average tax changes from various proposals, assuming zero net revenue effect. (For simplicity's sake, we have ignored heads of households. The effects on these taxpayers would, or could, resemble those on singles.)

AVERAGE TAX CHANGE PER PERSON FROM VARIOUS PROPOSED CHANGES IN FAMILY TAXATION RULES, ASSUMING NO NET FEDERAL REVENUE LOSS

[Taxable returns, 1979 levels]

Proposed change	Effect per single person	Effect per married person: In couple with closer than 80–20 earnings split	Effect per married person: In couple with 80–20 or further earnings split
1. Income splitting (tax group)	+$215	−$72	−$72
2. Optional separate filing (Fenwick)	+75	−205	+96
3. Mandatory separate filing	−97	−355	+282
4. 10-percent deduction up to $20,000 for 80–20 or less splits (Conable)	+27	−75	+35

Note: Tax changes per couple would be double those shown per married taxpayer. Offsetting revenue increases are assumed to be shared proportionately to each group's total tax burden.

These data make the answer to Representative Stark's question about who the witnesses at the hearing would want to favor (relative to current law) rather clear:

Our proposal, income splitting (or, effectively, separate filing with a community property apportionment rule for couples), would provide a modest tax cut to all married individuals, regardless of a couple's earnings split, and would increase taxes on single persons by a significant amount. As we pointed out in our testimony, this would be more politically feasible in the context of general tax reform, since existing preferences tend to favor married people. In fact, studies have been done showing that in conjunction with comprehensive reform our proposal would result in no tax increase for 98 percent of the single taxpayers.

The Fenwick bill, optional separate filing with a common law income apportionment rule, would increase taxes modestly for both singles and most married people, and would provide a significant tax cut for most individuals in two-job couples.

Mandatory separate filing with a common law income apportionment rule would provide a very large tax cut for most individuals in two-job couples, and a modest cut for singles, at the expenses of a very large tax increase for most married people.

The Conable bill to provide a 10 percent deduction based on the earnings of the lower income spouse (up to $20,000 and only for couples with an 80–20 or closer earnings split) would provide a modest tax cut for most individuals in two-job couples, and a small tax increase for singles and most married people.

Mr. **Corman** [presiding]. I wanted to ask if—tax policy aside—there is anything unfair about applying to all wage earners the rules that apply in community property States where all earnings of either or both spouses are treated as equal income for both of them?

Mr. **McIntyre**. That is our position.

Mr. **Corman**. Is there anybody else who feels there is any unfairness about that?

Ms. **Boyter**. Yes. Since you asked. If I am a housewife, married to David making $40,000 a year, I am better off than I as a civil servant making $20,000 a year and David making $20,000 a year.

If I am a housewife our family gets lots of benefits because I am home all day. I can shop for bargains; I don't have commuting expenses; I can pick the kids up when they get sick at school; I can arrange fresh flowers because I have time to do that; I can entertain the boss so my husband gets a promotion much more easily than when I am out working.

I am afraid that you are tending in the direction of saying, let's tax every family unit with the same income the same, and I think that is unfair, because you have to recognize that it is harder for us to have to jointly get $40,000 than if only one person goes out to earn it. That is the only unfairness I see in it.

Ms. **Hannegan.** I agree, when it takes two to pull the load, you have put tremendous stress on two people and not just one.

Mr. **Corman.** I have thoughts about what ought to be allowable deductions for the second wage earner, particulary in a family setting because it does seem to me that those expenses are as much expenses related to increasing your earning power, but I know that there are additional expenses working, or not working, but a lot depends on the individuals.

When you have to legislate for 220 million people, or 100 million taxpayers, it is very hard, and the trouble is, the more precise you try to be, the longer and more complicated the code gets.

I was thinking in my mind, where would we be if we had first a single tax table, just one tax table—you apportion income equally between two married people and you do something realistic about permitting a work expense?

Mr. **McIntyre.** That is exactly the way the law used to be. We even had a deduction for child care in those days.

Mr. **Corman.** Second, when it comes to the children, I am always offended by the fact that I get a $610 tax advantage for having a child and some poor fellow with one-tenth my income gets $140 for his child. I don't think that is fair.

So, if we did those three things—if we permit splitting of income and if we are realistic about whatever that added cost of getting that income is for the second wage earner, and we do something that is fair among all children—this is the only industrialized country that does not do anything about helping take care of the children of the working poor; we don't do that here, but we might give some thought to that—I'll tell you what we will do: We will grapple with this problem. We will come up with an extremely complicated solution. It won't cost us much money because none of you will be able to figure it out.

Is there any other comment?

Ms. **Boyter.** Maybe we should consider a more radical solution. That is to say, perhaps we should take out some of the progressivity in the taxes and say it would be flat across the middle, two-thirds of the income. Most of these problems would disappear if that were true.

Maybe we should consider not taxing the poor at all. Most of us are in the middle class—and everybody says he is in the middle class—so I guess it would be all right for all of us.

Mr. **Corman.** I wish whatever we do in the way of correcting this, we could do it so that it would simultaneously give us some simplicity in the code. I think simplicity has greater virtue than equity when you start trying to correct some of these things.

Ms. **Hannegan.** Some of us had a question, I believe, when you talk about the priorities. Is it necessary—do you really want this when you say it has to be tied into a family unit, when you are setting this up? You are saying married wage earners this way—can we just say the priority is on splitting the income, his and hers?

Mr. **Stark.** Yes. I expect people will suggest that they would prefer, as I think Ms. Boyter was suggesting, that there should be some priority to a couple with only one income, as opposed to giving the priority to a couple with two incomes. She wants imputed value at least to the income of the nonworking member of the partnership. Is that a fair statement?

Ms. **Boyter.** I was saying the one earner——

Mr. **Stark.** You are imputing value to his or her service at home?

Ms. **Boyter.** Yes.

Mr. **Stark.** I would expect there are people who would differ with that.

Mr. **Jamin.** I don't think the housewife would differ with that.

Mr. **McIntyre.** You mean they would be happy to pay higher taxes?

Mr. **Stark.** I believe—although I don't mean to stir that pot, if there is anybody here who wants to take up that issue—but I think you will find it is a more traditional—you might even say conservative—approach, but I would say that the great American tradition is one breadwinner and the housekeeping partner at home with the children, and that ought to be subsidized.

I don't want to get into that, but I think you would find quite a support for that.

Ms. **Hannegan.** What a person would like and what he is forced to do are two different things. There are many, many women I know who would live to stay home and do that, irregardless of what the single income is. Someday, someday perhaps not for all of the women, whether it is in this world or the next, or wherever, that woman is going to have to face having to go out and work.

I think times are changing. Some are going out to work because it happens to be more fashionable today. I am not responding to that. I am responding to a need, a necessity, and when we are talking about single wage earners, and that one woman sometimes becomes the sole wage earner, and the husband is at home, someday, as I pointed out before—you weren't here Mr. Stark—you get two incomes, again making the total of one. You don't forget that period you have been through when you have been that sole wage earner, where the spouse has been laid up, ill, you went out and faced all that trauma and everything else collapsed around you—someday those women who are saying "I want this privilege"—they are speaking from a luxury point of view. We are here stressing a need and we are stressing it from a necessity. I am not bringing it in from the point of a benefit, but I am bringing it from a point of necessity.

Mr. **Stark.** I hear you. I am just saying there are people that I think would make their voices heard who really take a strong, philosophic concern that—put in the vernacular which is not mine—that a woman's place is in the home, and I have a large vocal group of my constituency—I happen to disagree with them—but they feel very strongly about that, and I am sure given their list of priorities they would say that we ought to give the tax advantage, if there is going to be a relative one, to the one-earner couple.

Personally, I disagree with that, but politically I think that is a rather significant voice in the country.

Ms. **Hannegan.** When you say it is large, what do you mean?

Mr. **Stark.** Frankly, where "it" comes from—if you want to know where I find it—a parallel issue is the anti-ERA movement, and if you don't think that is not a loud movement, believe me, answer my mail.

What I am saying—it just happens in my district—I don't mean to make that a pejorative statement or anything else—I just find those people are well organized; they lobby effectively, and that tends to be often the people who have the best case are the least powerful in terms of representing their viewpoint.

I just am trying to build in the record a variety—we have had a variety of witness—I am trying to build into the record the ideas that you bring to us, so we can show our colleagues later that out of 20, 30, or 40 witnesses we asked to suggest a sense of priority, if we have to put one above the other in some relative economic skill—and we do have to do that, even if we phase it in as Mr. Jamin would suggest, or make changes as Mr. McIntyre would suggest—at some point the teeter-totter can't get both ends in the air at the same time.

It would help us for a representative group of citizens to make those statements as to what they think the priorities should be, rather than a bunch of Congressmen sitting here making them without talking to people across the country from all walks of life.

That is why I am asking each person to give some thought to what social purpose there is.

Mr. Corman suggested aiding children. I happen to think that is a good one. I tossed the one-job couple as a way to help, unfacetiously, but it is suggested that is a social benefit. When jobs are scarce, if people who work could stay home, there is another job around for another family.

I am not sure that is valid, but it is the kind of reasoning that some people would go through.

I am asking each of you from your perspective if you would—it would be helpful to say if we have to choose between the relative assistance, how we ought to rank this; because the code now has an advantage for the one-earner couple.

Mr. **Jamin.** If there were no revenue loss issue, would your concerns be valid? Would a one wage earner family be concerned that other people——

Mr. **Stark.** Relative advantage or disadvantage, if nobody in the next year had their taxes increased, you would have probably no political problem, and I tend to favor something that ascribes income to the earner.

Mr. **Jamin.** If revenue loss was not an issue, I don't believe your priorities would be an issue, because no one would lose as a result of closing the gap.

Mr. **Stark.** I think that is true.

Ms. Boyter?

Ms. **Boyter.** If you are concerned about the reactions of what you characterize as the conservative group, such as anti-ERA, you might be interested in the report of the White House Commission on Families' meeting for Maryland, because that was a very controversial meeting, because it was heavily dominated by a very conservative prolife group, and I was gratified to notice although antiabortion and certain others of the conservative concerns you would expect were the top—about the fifth or sixth concern from that very conservative group, was abolishing the marriage penalty.

They felt it should be abolished because the conservative peopl and I am a conservative——

Mr. STARK. I think they would support abolishing the marri penalty, but then you get to the next step, what about the income sp ting for one-earner couples, and I have a hunch—that is not bef us—but if you took this same group from Maryland and let's p sume at least half or two-thirds of those members were partners one income partnerships, and we said you can't split your inco which would double their income for tax bracket purposes, I afraid that the reaction would be loud and negative.

Do you see what I am saying?

Ms. BOYTER. The Mathias-Fenwick bill won't do that.

Ms. HANNEGAN. It allows the option; that is the beauty of the bi

Mr. STARK. The bad side of that is the revenue loss.

Mr. JAMIN. Sixty percent of the $237 billion windfall profits Co gress will be taking from the oil industry will be allocated to in vidual income taxes.

Mr. STARK. I am not sure we agreed to that.

No one needs to be penalized.

Mr. JAMIN. If I understand what you are telling us—and I may wrong—you are saying until we have enough of a voting constit ency who will pressure Congress, who will write their letters an form a group——

Mr. STARK. What I am trying to say is that the complication in doin what you would all like to see done is that you are going to chang certain groups' relative advantage and cost us some more revenu loss than we can pick up in other areas. Windfall profits tax is gon The President spent that before we had it out of the box.

If we did not have to get into the issue of whether we ought t allocate an advantage to the partner who gets to stay home and no work, which is a very subjective kind of thing, how do we allocat a certain amount—how do we impute earnings to that?—we shoul not be doing that. That is not our function and I am not sure it i good legislation.

But if there were a clear American sense of priority—I have hunch there is—I am not sure we know it; this is something tha sociologists may deal with and have a far better idea than we a legislators—but I think if we could agree, kind of get to a consensus, then the whole thing gets to be a lot simpler for us.

It becomes an accounting. We can get a whole set of tables and we will probably get some compromises. You can put the whole thing in a computer and get model returns and say, here is one that does not hurt poor people too much and it does not cut too much into the upper income people, and it is halfway between eliminating the marriage penalty; and I think we could work it out.

But right now this committee does not have before it a sense of what America's policy—there is no American policy—U.S. policy on what we ought to encourage in terms of families.

There is really not a consensus of whether we ought to encourage two earners in every family or whether we ought to encourage marriage or discourage it.

I think there are some answers like that abroad in the land. I think there is a consensus, but I am not sure we know exactly what it is. Once that is agreed to, where you get an 80-percent nod factor on both sides of the aisle, then the problem is a whole lot simpler.

That is all I am asking, is that in addition to what all of you have testified on, if we could even out of the witnesses today—let's say we got 80 percent of you and there will be 50 or 60 tomorrow—to pretty much agree where, if you had to give a relative advantage in the Tax Code generally, where we should direct that advantage, then you have simplified our job a whole lot.

It would probably get closer to what you want more quickly. That is why I am asking. Believe me, I am not trying to get into a dialogue; I am just curious to see how all of you independently would rank these types of couples or family units.

Mr. **Jamin.** Our answer lies with the elected officials, where we could have our voice heard. That is the only way we have to pressure them, and when we have 300 or 350 Congressmen who sponsor the Fenwick-Mathias legislation, and we have 50 or 60 Senators who will sponsor it, I assume we will have the consensus we need to change the law.

I don't see how we could ever achieve the ideal quorum because I have never known the country to hold one.

Mr. **Stark.** That is like many people trying to stop the bombing in Cambodia, and they still bombed.

Mr. **Jamin.** Five years ago the cosponsors of the Fenwick bill could have been counted on one hand. Now we number 221. You are getting letters on the subject. I don't think you are getting negative letters saying don't eliminate the marriage tax.

Mr. **Stark.** The negative letters say balance the budget.

Mr. **Jamin.** I am a firm believer in balancing the budget. You can do it on the spending side, or revenue side.

Mr. **Stark.** You need Mr. McIntyre to give you the wherewithal to accomplish the Fenwick bill. Thank you.

Mr. **Corman.** If you think about it, you can see one of our dilemmas. You say there are 220 or so Members, but here are 8 of you all on the same side, but not agreed among yourselves, as to how we ought to get to where you want us to go. That is our dilemma, how do we get from here to there?

But I suspect we are going to do something about the marriage penalty. As I say, I wish at the same time we could do something about the tax consequences of raising children. I think if we did that in a very positive way we could relieve the economic pressure on families with low incomes and lots of children. The present tax deduction system is very unfair as to those children.

Ms. **Hannegan.** Mr. Corman, when you talk about establishing some day centers for working mothers who have to go out, I know most people think about it in terms of the urban cities. I would like to bring to your attention there is a growing need now for the suburban communities, and the very nice suburban communities, where many women are having to go out and work, and would love to know where they could leave their little ones.

It is not just the need anymore of the urban cities; it is the nee of the suburban and the very nice small, little towns, too.

Mr. CORMAN. It is something that really is going to plague us if w do not address it responsibly. I am trying to get Ms. Boyter on m side, because I think we share the view about the expense of that secon wage earner. I think I would like to try to approach it on the basis o giving some deduction for those actual expenses, because the secon wage earner applies her talents someplace else and earns money for i But the work at home still has to be done by a day worker or a live-i nurse and it does seem to me that these expenses should be deductibl from her or the family unit's income.

I think there is some social advantage to that also, because I believ if those wages were deductible, we would find they would be mor reasonable, and they would be accounted for in the system.

I think the tragedy of domestic service now is that so much of it is outside the tax system and outside all the social protections that we give most workers.

I don't see any great advantage to telling an attorney or a CPA that what we really want you to become is a homemaker—because homemaking requires a lot of talents, but not necessarily the same talents. If someone wants to do that kind of work and be paid for it, she should be able to.

I think the tax system ought to be as neutral as possible in that respect.

Ms. BOYTER. The only problem I could see with that is, you might add more complications to the system. You would then be putting a large proportion of families who use the zero bracket amount in the position of itemizing their deductions probably, if all women who work are going to start deducting their business expenses, unless you make the adjustment to income.

Mr. CORMAN. We would do that because that is part of the cost of earning money.

Any other comments?

The committee stands adjourned until 10 o'clock tomorrow morning.

We thank the witnesses very much.

[Whereupon, at 4:10 p.m., the committee adjourned, to reconvene at 10 a.m., Thursday, April 3, 1980.]

TAX TREATMENT OF MARRIED, HEAD OF HOUSEHOLD, AND SINGLE TAXPAYERS

THURSDAY, APRIL 3, 1980

House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Al Ullman (chairman of the committee) presiding.

The Chairman. The committee will be in order, please.

It is my understanding that the first panel this morning will consist of Florence B. Donohue, Lynda Moerschbaecher, Samantha Sanchez, and Mary Wenig. Good morning. We are happy to welcome you to the committee. Without objection, each of your statements will be included in the record in full with supplemental materials, and we would be very happy for you to proceed and summarize your statements in any way you see fit.

We will hear first from Florence Donohue. Welcome to the committee.

Ms. Wenig. Thank you, Chairman Ullman. We are going to appear in reverse alphabetical order, Wenig, Sanchez, Moerschbaecher, and Donohue.

The Chairman. All right. Just go ahead and introduce the next of your colleagues and we will hear you in whatever order you see fit. You may proceed.

STATEMENT OF MARY MOERS WENIG, PROFESSOR OF LAW, UNIVERSITY OF BRIDGEPORT SCHOOL OF LAW

Ms. Wenig. I am glad to hear you state that my statement will be filed for the record. My statement is submitted on behalf of the four of us and in addition on behalf of a number of other panelists who had wanted to be here today but who unfortunately could not be.

I am a tax lawyer and a tax professor. I am here with an informal panel of witnesses who have found each other talking and writing about the subject of taxes and in particular about the marriage penalty tax in different towns throughout the country: In San Antonio, in San Francisco, in Atlanta, in New York, in New Haven.

We are an informal group who take the same position with respect to the proposed solution. I am referring now to page 1 and 2 of my statement, which was filed with you.

What we do believe is that section 1 should be amended to provide for a one-rate schedule for all individual taxpayers at rates consistent with the revenue needs of the Federal Government. We do believe that the present fourfold rate schedule imposing different rates of tax on marrieds filing jointly and surviving spouses, on heads of households, on unmarried taxpayers, and on marrieds filing separately should be eliminated.

We believe that there should be no aggregation of family income. We believe that earned income should be taxed to the taxpayer who earns it and that income from property should be taxed to the one who owns the property.

We believe in simplification of the tax code by removal of marital status as a test for allowance of zero bracket amounts, exclusions, deductions, and credits, and for the amount thereof. We take no position with respect to the size of zero bracket amounts, credits, exclusions, and deductions.

You have heard, I am sure, already in the course of these hearings, a great deal about how we got to where we are now and, of course, you yourselves know how we got to where we are now.

Risking repetition, I nonetheless want to state that what we have now is a fourfold tax rate system. The most favored tax bracket applies to married taxpayers filing jointly, the next favorite applies to heads of household, the next to single taxpayers and the fourth and toughest tax bracket applies to married taxpayers filing separately.

We got to these four tax rate brackets strictly in an accidental fashion. In 1948 when the joint return was introduced it was introduced not to aggregate married couples' income.

Instead the regular tax rate was applied to married taxpayers who were permitted to divide their income in half, compute the tax on each half, and multiply that smaller tax by two, resulting, with our progressive tax system, in a much lower tax.

That tax computation was introduced for two reasons: One to provide for geographical equalization between couples in separate property and community property states and, two, and really more importantly if you read the tax historians of the period, to introduce by the back door a very important tax reduction for upper income and middle income taxpayers. This tax reduction President Truman had vetoed twice before. This tax reduction passed finally only by way of the split income device and despite Presidential veto.

What we have is a four-rate tax structure which appears to benefit a minority of taxpayers: Marrieds with one income. In fact, our tax rate structure may benefit other taxpayers even more than it benefits the married couple with one earner. It benefits the 2-year widow or widower with a student child with his or her own income. It benefits the formerly married and now divorced taxpayer. There are four or five other categories of taxpayers who may use the most favorable rates and who, unlike married couples, are not required to aggregate income.

I assume the red light means that I should——

The CHAIRMAN. Well, we do not strictly adhere to it. It is a guideline for you. Would you like to conclude with some additional remarks?

Ms. Wenig. Let me conclude with an horrendous example. The
narriage penalty tax is a result of our tax rate system which came
bout in a strictly accidental manner.

In addition, there are several other sections of the code which pro-
ide components of the marriage penalty tax.

Let me give you one example and ask what advice you would give
o these two taxpayers, taxpayers A and B. Each is unmarried; each
as one dependent child; each has adjusted gross income of $6,000.
am referring to page 28 of my statement. Each qualifies as head
f household. The 1979 tax table shows that the tax on A's $6,000 in-
ome is $235, against which is allowed the $500 earned-income credit,
roducing a refund for A from the Federal Government of $265. The
gures are the same for B. If they marry, they would receive no credit
nd would owe an annual tax of $698. Their annual tax cost of mar-
iage amounts to $1,228, more than 10 percent of their combined
nnual income.

I ask again if these taxpayers came to you as clients, what advice
ould you have to give them if they said "We want to get married.
low much will it cost us?" We have to tell these low-income tax-
ayers: "Marriage will cost you $1,228 a year."

If Congress is in favor of marriage, the intact family, as I believe
to be, I think that it behooves Congress to rewrite the tax law so
hat it produces a tax-neutral situation so far as marital and non-
arital status is concerned.

Our next speaker will be talking about the demography of the tax.

[The prepared statement follows:]

STATEMENT OF MARY MOERS WENIG, PROFESSOR OF LAW, UNIVERSITY OF BRIDGEPORT SCHOOL OF LAW, BRIDGEPORT, CONN.

SUMMARY

My name is Mary Moers Wenig. I am a Professor of Law at University of Bridgeport School of Law, 600 University Avenue, Bridgeport, Connecticut 06602.

I am appearing before the Committee in my individual capacity. I am not appearing at the request of any client or of my employer and nothing I say is intended to represent the view of the University of Bridgeport or of any organization to which I belong. Some portions of my statement are based on studies prepared by individual members of the Subcommittee on Married & Single Taxpayers, which I chair, of the Committee on Personal Income Tax of the New York State Bar Association Section on Taxation but nothing in my statement can be said to represent the view of the Subcommittee, the Committee, the Section or the Association.

I present this statement in support of the following recommendations:

1) Amendment of IRC Sec. 1 to provide for one rate schedule for all individual taxpayers at rates consistent with the revenue needs of the federal government.
    a) Elimination of the present fourfold rate schedule imposing different rates of tax on
        i) married filing jointly (and surviving spouses)
        ii) head of household
        iii) unmarried (other than surviving spouse and head of household)

    - iv) married filing separately

  - b) Elimination of joint return, except for spouses who elect to aggregate income and pay the tax on the aggregate.

  - c) No position is taken with respect to the retention of a separate rate schedule for trusts and estates.

2) Statutory codification of the principle that earned income should be taxed to the one who earns it.

  - a) Confirmation of concept that income from property should be taxed to the owner of the property.

  - b) Recognition that since 1948 Congress, the courts and the Internal Revenue Service have devised sophisticated tests for determining the true owner when property interests are transferred between related taxpayers.

  - c) Recognition that constructive ownership and attribution rules between related taxpayers must be continued in the code (though possibly revised toward consistency).

3) Placing the burden of determination of "fairness," i.e., ability to pay, to the extent it is not a function of quantification, as the progressive rate is, on the definition of taxable income, including exemptions, exclusions and deductions, and on credits, rather than on the taxpayer's marital, semi-marital or non-marital status.

    No position is taken on whether the source of income, e.g., earned or unearned, capital or ordinary, should be differentiated by rate.

4) Simplification of the code by removing marital status as test for allowance of zero bracket amount, exclusions, deductions and credits and for the amount thereof.

    No position is taken on the size of zero bracket amounts, credits, exclusions and deductions.

5) Decreasing the gradation in progressive tax rates, towards elimination of pressure for ameliorative categorizations, exclusions, deductions and credits.

I. The History and Consequence of Our Fourfold Tax Rate Structure

What we have is an income tax, that is, a tax on income, not an ability-to-pay-tax, in the way in which a net worth or an increase in net worth tax or a consumption tax may be considered an ability-to-pay tax. Nonetheless, our income tax structure attempts to take into account ability to pay with two basic devices: 1) the method of determination of taxable income and 2) the rate schedules applicable to taxable income.

Not until 1951, with the enactment of a separate rate schedule for "heads of household," did the tax rate schedule assign the burden of determination of ability to pay not only upon the arithmetic progression of the rate structure but also upon assumptions with regard to the status of the taxpayer.

The 1948 income splitting legislation did not itself provide a separate rate schedule; its enactment was not prompted by considerations of ability to pay. Instead, its enactment was brought about as an aftermath of the Supreme Court's 1930 decision in Poe v. Seaborn (282 U.S. 101) which permitted married couples in one-sixth of the states, the community property states, to split not only their investment income but also their earned income. Split-income was urged for all couples in all the forty-eight states to stem the flight of the common law states to "unfamiliar and complicated property relationships," that is, to community property. Split-income was urged, also, to subdue the advantage of investment income couples over earned income couples. It was because income-splitting was a defensible tax reform producing "significant tax reduction for most middle- and upper-bracket taxpayers," a reduction otherwise "politically impossible," that this change was enacted over presidential veto. (Surrey at 1097-9, 1105-6).

The 1948 enactment, taxing husband and wife as if they were two ingle people, each with an income equal to 50% of their aggregate income, id not differentiate among taxpayers on ability to pay.

The history of tax legislation affecting tax rates, in the years fter the enactment of income splitting in 1948, has been a conscious or nconscious shift toward forcing the tax rate structure itself, rather han the definition of taxable income, to assume the burden of deter-ination of ability to pay on the basis of taxpayer's status.

The "head of household" rate structure was enacted in 1951 to miti-ate what was regarded as the harsh treatment, accorded to widows, idowers and other single persons with dependents, under the 1948 act, hich had provided tax reductions principally to married taxpayers. The ead of household invention, which also benefits some taxpayers with self-pporting children or grandchildren, has been described as a compromise hat was probably intended as a stopgap measure until a better solution as found. While other measures, stopgap or otherwise, have since been nacted, head of household remains with us.

The built in assumptions of the 1951 definition of heads of house-old were challenged when it was determined that the new provision did t solve the problem it was designed to cure. While, under the new ad of household rate the widow or widower with small children received lf the benefits of income splitting, the denial of the other half rned out to be a substantial tax increase, in some cases, compared to e couple's tax. Moreover, a taxpayer was entitled to the benefits of e head of household provision even though the child or grandchild who made him eligible for it was self-supporting and a taxpayer in his own right, with the result, in some cases, that the combined tax liability of a taxpayer and his self-supporting child was less than the tax of a married couple with the same income.

Hence, in 1954, a new category of taxpayer--heads of families--was considered, eliminating the separate head of household rate schedule and permitting the supporters of related dependents to split their incomes for tax purposes. This proposal, adopted by the House, was rejected in favor of retention of the head of household rate schedule, expanding to a limited extent the definition of taxpayers who qualified for the head of household rate, and providing for a new status of taxpayers--surviving spouses--widows and widowers, with dependent children, who were permitted for a period of two years after the death of their spouses to compute the tax on their own unaggregated income on the split-income basis.

Single taxpayers, however, objected to the fact that their effective tax rate could be 40.9% greater than that of married taxpayers with the same single taxpayer income.

The House Ways and Means Committee's proposed solution in 1969 to the nonmarriage penalty tax was to eliminate the two year limit on the full income splitting privilege afforded taxpayers as surviving spouses and to enlarge considerably the scope of heads of household. All heads of household and all widows and widowers regardless of age and all unmarried individuals age 35 and over were to be treated as "intermediate tax rate individuals." The tax on this new category of taxpayers, like the tax on heads of household, would be halfway between the tax on other single taxpayers and the tax on married couples filing joint returns and surviving spouses.

The Senate Finance Committee agreed that the tax differential between single and married taxpayers was excessive but rejected the age 35 test as arbitrary. Instead, the Committee, and Congress, retained the heads of household definition and its position as midway between joint return and single taxpayer rates. The Committee provided, and Congress enacted, a rate schedule which limited the tax paid by all single persons, regardless of age, to no more than 120% of the tax paid by married taxpayers at the same taxable income level. To deny married couples the pportunity to use the new single taxpayer rate schedule, there was enacted a fourth rate schedule required to be used by married taxpayers iling separate returns. (Bittker at 1429).

In this gradual and piecemeal fashion, the present fourfold rate chedules applicable to individual taxpayers crept into the Internal evenue Code.

The lowest tax rate schedule applies to "married individuals filing oint returns" and to "surviving spouses." (IRC §1(a), §2(a)).

The next highest applies to "heads of households." (IRC §1(b), 2(b)).

The next highest, to "unmarried individuals (other than surviving pouses and heads of households)." (IRC §1(c)).

The highest of the four rate schedules applies to "married in- ividuals filing separate returns." (IRC §1(d)).

Table I[*], which follows, shows the taxable income brackets imposed y the fourfold rate schedule applicable to taxable years beginning ter December 31, 1978.

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he Tables in this statement were published in Wenig, Marital Status Taxes, Chapter 5 of Douthwaite, Unmarried Couples & the Law (Allen ith Co. 1979). The Tables have been renumbered for their sequence in is statement.

TABLE I
Taxable Income Brackets for Individuals: Some Comparisons of the Four Rate Tables.

Taxable income brackets	(a) Married Individuals Filing Joint Returns & Surviving Spouses	(b) Heads of Households	(c) Unmarried Individuals (other than Surviving Spouses & Heads of Households)	(d) Married Individuals Filing Separate Returns
$ 1,700	0	0	0	14% over $1,700
2,300	0	14% over $2,300	14% over $2,300	
2,750	0			$147+16%
3,400	14% over $3,400		$154+16%	
3,800				$315+18%
4,400		$294+16%	$314+18%	
5,500	$294+16%			
5,960				$702+21%
6,500		$630+18%	$692+19%	
7,600	$630+18%			
8,000				$1,133+24%
8,500			$1,072+21%	
8,700		$1,026+22%		
10,100				$1,637+28%
10,800			$1,555+24%	
11,800		$1,708+24%		
11,900	$1,404+21%			
12,300				$2,253+32%
12,900			$2,059+26%	
14,950				$3,101+37%
15,000		$2,476+26%	$2,605+30%	
16,000	$2,265+24%			
17,600				$4,081+43%
18,200		$3,308+31%	$3,565+34%	
20,200	$3,273+28%			
22,900				$6,360+49%
23,500		$4,951+36%	$5,367+39%	
28,800		$6,859+42%	$7,434+44%	
29,900	$4,505+32%			
30,000				$9,839+54%
34,100		$9,085+46%	$9,766+49%	
35,200	$6,201+37%			
41,500			$13,392+55%*	
42,800				$16,757+59%
44,700		$13,961+54%*		
45,800	$12,720+49%			
54,700				$23,772+64%
55,300			$20,982+63%	
60,000	$19,678+54%*			
60,600		$22,547+59%		
81,200				$40,732+68%
81,800		$35,055+63%	$37,677+68%	
85,600	$33,502+59%			
107,700				$58,752+70%
108,300		$51,750+68%	$58,752+70%	
109,400	$47,544+64%			
161,300		$87,790+70%		
215,400	$117,504+70%			

The tax at each bracket is the dollar amount plus the percentage of taxable income in excess of the taxable income bracket. The 1979 tax rate tables are used.

*The bracket at which the 50% max-tax ceiling rate on personal service income is applicable.

Use of the lowest rate table by married individuals requires an aggregation of their income. No other category of taxpayer is required to aggregate income to qualify for any of the first three tax rate schedules.

The aggregation of married couple's income was not accomplished because of any expressed decision on the part of Congress as to the appropriate tax unit. Congress itself had, in 1941, rejected mandatory aggregation and unit taxation for married taxpayers when Treasury, to eliminate the geographical disparity between couples in community property states and couples in common law states, proposed mandatory joint returns, with one rate schedule applicable both to the combined joint return income and to the income of the single taxpayer. The voluntary ggregation, more properly described as the beneficial aggregation with er capita, rather than husband-wife unit, tax, which was accomplished n 1948 was acceptable because it produced sizeable tax reductions for pouses in both common law and community property states.

Per capita tax or income-splitting, enacted in 1948, may also have een acceptable because it was accompanied by Treasury Department Form 36, a form for one spouse to authorize the other to sign and file a oint return. This form was described as "useful to husbands not deiring to disclose to their wives the information appearing on a joint eturn." (Surrey at 1110).

The aggregation accomplished in 1969 is no longer voluntary, in the y that it was from 1948 to 1968 for the community property married uple and the noncommunity property married couple with husband and fe with substantially equal income. Per capita taxation was abandoned d a new tax rate table for married taxpayers filing separate returns s enacted.

Tables II and II-A, which follow, show the cost of filing returns which are taxed under this fourth tax rate table. What these tables do not show are additional costs imposed by this fourth tax rate table, the negative zero bracket amount cost and the additional failure to file penalty.

The negative zero bracket amount costs result if one spouse, who files a separate return, itemizes his deductions. In that event the other spouse must itemize. If her itemized deductions are less than her zero bracket amount, she must add the difference to compute her taxable income (IRC §63).

Taxpayers who fail to file income tax returns are subject to penalty of up to 25% of their unpaid tax (IRC §6651). If the delinquent taxpayers are husband and wife, IRS can impose still another penalty on them by preparing returns for them as marrieds filing separately. (Yetman TC Mem. 1978-52).

TABLE II

Tax Cost of Marriage Exacerbated by Filing Separate Returns

Couple's total taxable income (before personal exemptions)	Tax when couple is married and files joint return	Tax when couple married and filing separate returns, and share of income earned by lower-earning spouse is:										
		0%	5%	10%	15%	20%	25%	30%	35%	40%	45%	50%
$ 5,000	$ 0	$ 350	$ 306	$ 266	$ 226	$ 186	$ 147	$ 111	$ 76	$ 41	$ 7	$ 0
10,000	702	1,373	1,252	1,132	1,027	922	817	754	732	717	707	701
15,000	1,635	2,797	2,556	2,316	2,098	1,930	1,825	1,759	1,708	1,663	1,640	1,634
20,000	2,745	4,682	4,252	3,859	3,531	3,306	3,147	3,007	2,881	2,811	2,745	2,746
25,000	4,057	6,899	6,295	5,757	5,367	5,033	4,721	4,491	4,291	4,170	4,075	4,057
30,000	5,593	9,349	8,613	7,920	7,410	6,939	6,575	6,245	5,960	5,748	5,621	5,594
35,000	7,348	11,998	11,053	10,220	9,622	9,081	8,591	8,146	7,824	7,589	7,397	7,348
40,000	9,366	14,698	13,618	12,725	11,989	11,301	10,722	10,257	9,865	9,528	9,402	9,365
45,000	11,516	17,458	16,183	15,235	14,419	13,671	13,002	12,425	12,018	11,738	11,566	11,515
50,000	13,798	20,408	18,933	17,809	16,866	16.071	15,377	14,795	14,323	14,031	13,881	13,798
55,000	16,248	23,358	21,743	20,554	19,466	18,481	17,770	17,193	16,764	16,461	16,247	16,248
60,000	18,698	26,524	24,645	23,299	22,131	21,117	20,255	19,638	19,271	18,947	18,798	18,698
65,000	21,178	29,724	27,720	26,184	24,819	23,757	22,883	22,221	21,779	21,547	21,385	21,297
70,000	23,678	32,924	30,795	29,156	27,696	26,440	25,558	24,931	24,407	24,147	23,997	23,997
75,000	26,178	36,124	33,870	32,141	30,602	29,320	28,269	27,641	27,182	26,807	26,697	26,697
80,000	28,678	39,324	36,950	35,126	33,532	32,203	31,206	30,372	29,957	29,607	29,407	29,397
85,000	31,178	42,635	40,030	38,111	36,462	35,133	34,144	33,347	32,732	32,457	32,245	32,097
90,000	33,678	46,035	43,242	41,096	39,400	38,063	37,081	36,322	35,672	35,307	35,082	34,917
95,000	36,178	49,435	46,512	44,228	42,360	41,016	40,019	39,297	38,697	38,222	37,920	37,867
100,000	38,678	52,835	49,786	47,408	45,432	44,006	43,023	42,272	41,722	41,222	40,817	40,817

TABLE II-A

Tax Cost of Marriage Exacerbated by Filing Separate Returns

Couple's total taxable income (before personal tax exemptions)	Dollar cost of filing separate returns rather than joint return when share of income earned by lower-earning spouse is:										
	0%	5%	10%	15%	20%	25%	30%	35%	40%	45%	50%
$ 5,000	$ 350	$ 306	$ 266	$ 226	$ 186	$ 147	$ 111	$ 76	$ 41	$ 7	$ 0
10,000	671	550	430	325	220	115	52	30	15	5	0
15,000	1,162	921	681	463	295	190	124	73	28	5	0
20,000	1,937	1,507	1,114	786	561	402	262	136	66	0	1
25,000	2,842	2,238	1,700	1,310	976	664	434	234	113	18	0
30,000	3,756	3,020	2,327	1,817	1,346	982	652	367	155	28	1
35,000	4,650	3,705	2,872	2,274	1,733	1,243	798	476	241	49	1
40,000	5,332	4,252	3,359	2,623	1,935	1,356	891	499	162	36	0
45,000	5,942	4,667	3,719	2,903	2,155	1,486	909	502	222	50	0
50,000	6,610	5,135	4,011	3,068	2,273	1,579	997	525	233	83	0
55,000	7,710	5,495	4,306	3,218	2,233	1,522	945	516	213	1	0
60,000	7,826	5,947	4,601	3,433	2,419	1,557	940	573	249	100	0
65,000	8,546	6,542	5,006	3,641	2,579	1,705	1,043	601	369	207	119
70,000	9,246	7,117	5,478	4,018	2,762	1,880	1,253	729	469	319	319
75,000	9,946	7,692	5,963	4,124	3,142	2,091	1,463	1,004	629	519	519
80,000	10,646	8,272	6,448	4,854	3,525	2,528	1,694	1,279	929	729	719
85,000	11,457	8,852	6,933	5,284	3,955	2,966	2,169	1,554	1,279	1,067	919
90,000	12,357	9,564	7,418	5,722	4,385	3,403	2,644	1,994	1,629	1,404	1,239
95,000	13,257	10,334	8,050	6,182	4,838	3,841	3,119	2,519	2,044	1,742	1,689
100,000	14,157	11,108	8,730	6,754	5,328	4,345	4,094	3,044	2,544	2,139	2,139

The tax rate changes, enacted in 1951, in 1954 and in 1969, have placed on the tax rate schedule's definitions of taxpayer the burden of determination of ability to pay. Each of these enactments has, in turn, been appropriately criticized as not solving the problems it was designed to cure and as presenting unanticipated problems.

The unanticipated problems in each case arise because of the fact that the definition of taxpayer in terms of his or her status--married or single, surviving spouse or head of household--embodies broad-brush assumptions. These assumptions may have been based on guesses contrary to fact or on value judgments or socioeconomic conditions which have now changed. One important player in the tax theater said, with a sigh of relief, after the 1948 enactment of split-income, that wives can now return "to the pursuit of homemaking." (Surrey at 1111).

Whatever the basis for the assumptions embodied in the marital, emimarital and nonmarital definitions of taxpayers, which result in he application of one or another of the four tax rates, the Internal evenue Code today presents anomalies that call for correction.

The Code today applies the most favored tax treatment, by way of he tax rate schedules and income splitting or disaggregation, to he following categorizations of individual taxpayers, listed in escending order of preferred treatment:

> The two-year widow or widower with under-age-19 or full-time-student child, with own income, at home. (1st rate; disaggregation.)
>
> The formerly married taxpayer who qualifies as head of household and who has elected §71/215 income splitting with his or her former spouse. (2d rate; disaggregation.)

The unmarried taxpayer who qualifies as head of household and who shares the household with another with substantially equal income. (2d rate; disaggregation.)

The taxpayer who is married to a nonresident alien with own unaggregated income and who has self-supporting unmarried child or grandchild, with own income, at home. (2d rate; disaggregation.)

The single taxpayer with self-supporting unmarried child or grandchild, with own income, at home. (2d rate; disaggregation.)

The married taxpayer (filing jointly) with non-income spouse. (1st rate)

The married taxpayer (filing jointly) whose income substantially exceeds his or her spouse's income. (1st rate; aggregation.)

The single taxpayer, with true dependent at home or with dependent parent elsewhere. (2d rate)

The single or formerly married taxpayer. (3d rate)

The married taxpayer (filing jointly) whose income is substantially equal to his or her spouse's income. (1st rate; income aggregation).

The taxpayer married to a nonresident alien with own unaggregated income. (4th rate; disaggregation.)

The separated but married taxpayer who has elected §71/215 income splitting. (4th rate; disaggregation.)

The separated but married taxpayer (whose spouse may be deemed to be unmarried) and the married taxpayer who files separately. (4th rate; disaggregation.)

The married taxpayer (filing jointly) whose income is substantially lower than his or her spouse's income. (1st rate, at marginal bracket; aggregation.)

I. The Demography of the Marriage Penalty Tax

Congress was aware in 1948 of the fact that, by cutting a married couple's income in half and then adding together the tax on both halves, single taxpayers were put at a tax disadvantage. Congress alleviated, but did not do away with, this disadvantage, as the legislators worked their way, step by step, to the present fourfold rate schedule.

There appears however, not to have been Congressional recognition of its enactment of the "marriage penalty tax."

The simplest arithmetic of the tax cost of marriage and the tax cost of nonmarriage which arises from application of the 1979 tax rate tables is illustrated by the following Tables III, III-A, IV, IV-A, V and V-A:

TABLE III
Tax Cost of Marriage (Shaded Area) and Nonmarriage

Couple's total taxable income (before personal exemptions)	Tax when couple is married and files joint return	Tax when couple not married to each other or anyone else and each is taxed on rate table applicable to unmarried individuals (other than surviving spouses and heads of households), and share of income earned by lower-earning cohabitant is:										
		0%	5%	10%	15%	20%	25%	30%	35%	40%	45%	50%
$ 5,000	$ 0	$ 250	$ 209	$ 169	$ 132	$ 97	$ 62	$ 27	$ 0	$ 0	$ 0	$ 0
10,000	702	1,176	1,071	976	881	786						
15,000	1,635	2,344	2,149	1,962	1,782							
20,000	2,745	3,836	3,504	3,204	2,904							
25,000	4,057	5,562	5,111	4,686	4,324	4,086						
30,000	5,593	7,521	6,926	6,341	5,926	5,618						
35,000	7,348	9,721	8,951	8,209	7,704							
40,000	9,366	12,167	11,186	10,304	9,703							
45,000	11,516	14,642	13,516	12,581	11,866							
50,000	13,798	17,142	15,891	14,891	14,083							
55,000	16,248	19,642	18,266	17,223	16,351							
60,000	18,698	22,142	20,641	19,563								
65,000	21,178	24,642	23,016	21,903								
70,000	23,678	27,142	25,419	24,243								
75,000	26,178	29,642	27,829	26,583								
80,000	28,678	32,142	30,239	28,928								
85,000	31,178	34,642	32,649	31,273								
90,000	33,678	37,142	35,061									
95,000	36,178	39,642	37,476									
100,000	38,678	42,142	39,891									

Tax is computed on basis of 1979 rates. The taxable income in column 1 is before deductions for personal exemptions. For computation of tax on joint return (column 2), taxable income is reduced by $2,000 for two personal exemptions. For all other columns, each taxpayer's share of the total taxable income is reduced by $1,000 for one personal exemption. The 50% max-tax on personal service income is used where applicable.

TABLE III-A

TABLE III-A

Tax Cost of Marriage (Shaded Area) and Nonmarriage

Couple's total taxable income (before personal exemptions)	Dollar amount of marriage penalty tax: comparison of joint return tax and tax when couple not married to each other or anyone else and each is taxed as unmarried individual, and share of income earned by lower-earning cohabitant is: 0%	5%	10%	15%	20%	25%	30%	35%	40%	45%	50%
$ 5,000	$ −250	$ −209	$ −169	$ −132	$ −97	$ −62	$ −27	$ 0	$ 0	$ 0	$ 0
10,000	−474	−369	−274	−179	−84	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
15,000	−709	−514	−327	−147	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
20,000	−1,091	−759	−459	−159	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
25,000	−1,505	−1,054	−629	−267	−29	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
30,000	−1,928	−1,333	−748	−333	−25	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
35,000	−2,373	−1,603	−861	−356	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
40,000	−2,801	−1,820	−938	−337	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
45,000	−3,126	−2,000	−1,065	−350	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
50,000	−3,344	−2,093	−1,093	−285	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
55,000	−3,394	−2,018	−975	−103	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
60,000	−3,444	−1,943	−865	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
65,000	−3,464	−1,838	−725	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
70,000	−3,464	−1,741	−565	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
75,000	−3,464	−1,651	−405	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
80,000	−3,464	−1,561	−250	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
85,000	−3,464	−1,471	−95	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
90,000	−3,464	−1,383	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
95,000	−3,464	−1,298	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
100,000	−3,464	−1,213	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Plus (+) figures show additional tax imposed if couple married, i.e., the amount of tax saved if couple not married.

Minus (−) figures show tax cost of not being married.

TABLE IV
Tax Cost of Marriage (Shaded Area) and Nonmarriage

Couple's total taxable income (before personal exemptions)	Tax when couple is married and files joint return	Tax when couple not married to each other or anyone else and higher-earner is taxed as head of household and lower-earner is taxed as unmarried individual, and share of income earned by lower-earner is:					
		0%	10%	20%	30%	40%	50%
$ 5,000	$ 0	$ 237	$ 167	$ 97	$ 27	$ 0	$ 0
10,000	702	1,091	899	719	[illegible]	[illegible]	[illegible]
15,000	1,635	2,236	1,875	[illegible]	[illegible]	[illegible]	[illegible]
20,000	2,745	3,556	2,995	[illegible]	[illegible]	[illegible]	[illegible]
25,000	4,051	5,130	4,330	[illegible]	[illegible]	[illegible]	[illegible]
30,000	5,593	6,942	5,850	[illegible]	[illegible]	[illegible]	[illegible]
40,000	9,366	11,339	9,596	[illegible]	[illegible]	[illegible]	[illegible]
50,000	13,798	16,111	13,888	[illegible]	[illegible]	[illegible]	[illegible]
60,000	18,698	21,111	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
70,000	23,678	26,111	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
80,000	28,678	31,111	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
90,000	33,678	36,111	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
100,000	38,678	41,111	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Tax is computed on basis of 1979 rates. The taxable income in column 1 is before deductions for personal exemptions. For computation of tax on joint return (column 2), taxable income is reduced by $2,000 for two personal exemptions. For all other columns, each taxpayer's share of the total taxable income is reduced by $1,000 for one personal exemption. The 50% max-tax on personal service income is used where applicable.

TABLE IV-A
Tax Cost of Marriage (Shaded Area) and Nonmarriage

Couple's total taxable income (before personal exemptions)	Dollar amount of marriage penalty tax: comparison of joint return tax to tax when couple not married to each other or anyone else and higher-earner is taxed as head of household and lower-earner is taxed as unmarried individual, and share of income earned by lower-earner is:					
	0%	10%	20%	30%	40%	50%
$ 5,000	−$ 237	−$ 167	−$ 97	−$ 62	−$ 27	$ 0
10,000	− 389	− 197	− 17	[illegible]	[illegible]	[illegible]
15,000	− 601	− 240	[illegible]	[illegible]	[illegible]	[illegible]
20,000	− 811	− 250	[illegible]	[illegible]	[illegible]	[illegible]
25,000	− 1,073	− 273	[illegible]	[illegible]	[illegible]	[illegible]
30,000	− 1,349	− 257	[illegible]	[illegible]	[illegible]	[illegible]
40,000	− 1,978	− 230	[illegible]	[illegible]	[illegible]	[illegible]
50,000	− 2,313	− 90	[illegible]	[illegible]	[illegible]	[illegible]
60,000	− 2,413	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
70,000	− 2,433	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
80,000	− 2,433	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
90,000	− 2,433	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
100,000	− 2,433	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Plus (+) figures show additional tax imposed if couple married, i.e., the amount of tax saved if couple not married and if higher-earner qualifies as head of household.
Minus (−) figures show tax cost of not being married.

TABLE V

Tax Cost of Marriage (Shaded Area) and Nonmarriage

Couple's total taxable income (before personal emptions)	Tax when couple is married and files joint return	Tax when couple not married to each other or anyone else and both are taxed as head of household, and share of income earned by lower-earner is: 0%	10%	20%	30%	40%	50%
5,000	$ 0	$ 237	$ 167	$ 97	$ 27	$ 0	$ 0
10,000	702	1,091	899	719	[illegible]	[illegible]	[illegible]
15,000	1,635	2,236	1,875	[illegible]	[illegible]	[illegible]	[illegible]
20,000	2,745	3,556	2,995	[illegible]	[illegible]	[illegible]	[illegible]
25,000	4,057	5,130	4,330	[illegible]	[illegible]	[illegible]	[illegible]
30,000	5,593	6,942	5,850	[illegible]	[illegible]	[illegible]	[illegible]
40,000	9,366	11,339	9,596	[illegible]	[illegible]	[illegible]	[illegible]
50,000	13,798	16,111	13,876	[illegible]	[illegible]	[illegible]	[illegible]
60,000	18,698	21,111	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
70,000	23,678	26,111	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
80,000	28,678	31,111	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
90,000	33,678	36,111	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
00,000	38,678	41,111	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

is computed on basis of 1979 rates. The taxable income in column 1 is before deductions for personal
emptions. For computation of tax on joint return (column 2), taxable income is reduced by $2,000 for two
onal exemptions. For all other columns, each taxpayer's share of the total taxable income is reduced by
00 for one personal exemption. The 50% max-tax on personal service income is used where applicable.

TABLE V-A

Tax Cost of Marriage (Shaded Area) and Nonmarriage

ple's total ble income (before personal emptions)	Dollar amount of marriage penalty tax: comparison of joint return tax to tax when couple not married to each other or anyone else and both are taxed as head of household, and share of income earned by lower-earner is: 0%	10%	20%	30%	40%	50%
5,000	$ −237	$ −167	$ −97	$ −27	$ 0	$ 0
10,000	−389	−197	−17	[illegible]	[illegible]	[illegible]
15,000	−601	−240	[illegible]	[illegible]	[illegible]	[illegible]
20,000	−811	−250	[illegible]	[illegible]	[illegible]	[illegible]
25,000	−1,073	−273	[illegible]	[illegible]	[illegible]	[illegible]
30,000	−1,349	−257	[illegible]	[illegible]	[illegible]	[illegible]
40,000	−1,973	−230	[illegible]	[illegible]	[illegible]	[illegible]
50,000	−2,313	−78	[illegible]	[illegible]	[illegible]	[illegible]
60,000	−2,413	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
70,000	−2,433	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
80,000	−2,433	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
90,000	−2,433	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
00,000	−2,433	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

(+) figures show additional tax imposed if couple married, i.e., the amount of tax saved if couple not
ed and each qualifies as head of household.
(−) figures show tax cost of not being married.

These Tables illustrate the simplest arithmetic of the marriage penalty tax because provisions of the Code, other than the tax rate tables, the built-in zero bracket amounts and the 50% max-tax, are not factored in.

What these Tables show is that if all or almost all of a married couple's income is income of one spouse, there is no marriage penalty tax; the married couple is treated more kindly by the tax rates than is a comparable unmarried couple. If the married couple's aggregate income includes income of both spouses and the second income provides 20% or more of the aggregate income, however, the couple is surcharged because they are married.

What these Tables show is the surcharge imposed upon one couple.

What is relevant to Congress in its consideration of the tax treatment of married couples is the demography of the marriage penalty tax.

What the Census Bureau and Department of Labor information reveals is that the tax benefits of the joint return accrue only to a steadily decreasing minority of a steadily decreasing majority. The joint return detriment suffered by two-earner couples and unmarried taxpayers affects a steadily increasing proportion of taxpayers.

Almost one-fourth of the 73 million US households are occupied by primary individuals living alone (15 million) or with persons not related to them (2 million.) Around three-fourths (56 million) of the 73 million households contain families. The proportion of non-family households has been gaining steadily in recent years, up from 18.4% in 1969 to 23% in 1976.

Around 64% (47 million) of the 73 million households are families with both spouses present. In more than half of husband-wife families with chool-age children, the wives are in the labor force. Only 15.5% f all American families consist of working husband, wife not in the abor force and one or more children under age 18. The percentage of usband-wife families with school age children and with wife in the abor force has increased from 26% in 1948 to 52% in 1975.

Although a working woman still earns only 60¢ to every dollar a n earns, wives are in the labor force because their families need their aychecks.

Said the Wall Street Journal (2/2/76), "[O]ne thing is certain. f the income brought into family coffers by the womenfolk of the ountry were suddenly cut off, the nation's high-flying 'standard of iving' would collapse overnight.... The workingman breadwinner who esn't have a wife on a payroll just may wind up not having enough bread."

The demography of the marriage penalty tax is also reflected in the easury's dollar figures. (Sunley 10/22/79.)

In 1974, 26 million taxpayers who filed 13 million joint returns paid most $2 billion more in taxes than they would have had to pay if they re single. In 1978, more than 32 million taxpayers who filed 16 million x returns paid marriage penalty taxes of almost $11 billion. Treasury's ojection of the marriage penalty tax shows it increasing in annual increments, of around $2 billion to almost $4 billion a year, until the rriage penalty tax mounts to a cost of over $28 billion in 1984.

Some portion of this cost is attributable to the inflation tax, that is, the fact that as incomes rise because of inflation the progressive x rates hit harder. But much of this cost is attributable to the ineasing number of two-paycheck marriages and, one hopes, to the lessening of the gap between the market place's valuation of women's work and of men's work.

The inflation tax, produced by the progressive rates, is an unintentional tax. But it is an unintentional tax which is assumed by all taxpayers.

The marriage penalty tax is an unintentional tax, also. Unlike the inflation tax, however, the marriage penalty tax discriminates. It discriminates, unintentionally, against the very taxpayers whom Congress set out to benefit when it first enacted joint returns in 1948 - taxpayers in the intact marriage.

III. The Components of the Marriage Penalty Tax*

At the risk of oversimplifying, it can be said that for most purposes the Code treats husbands and wives as if they were one person instead of two but imposes on the combined income of those spouses who are willing to accept responsibility for each other's potential tax liability a tax which may be as much as 20% lower than that which would be imposed on the same amount of income earned by an unmarried taxpayer. Further savings can be achieved through the ability to use one spouse's deductions against the other spouse's income. To the extent that married taxpayers are able to benefit from such treatment, single taxpayers feel agrieved. While many single taxpayers might concede that the combined income of two taxpayers should be subject to less taxes since it must support two people, they find it difficult to understand why their tax liability should not be similarly reduced if they have dependents to support or why the differential bears no discernable relationship to the actual or estimated cost of supporting an extra person.

On the other hand, many married taxpayers find that these lower rates are not sufficiently lower than the rates imposed on single taxpayers to compensate for the fact that they must aggregate their incomes to take advantage of them and for the other provisions that work to their disadvantage. To these taxpayers, marriage has resulted in a higher tax liability.

The provisions that differentiate according to marital status and that are detrimental to married taxpayers can be divided roughly into three categories:

1) Those that alter the tax consequences of a particular transaction because it occurs between spouses or between one spouse and an economic

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* McCaffrey, 1975 unpublished NYSBA draft; 11th National Conference on Women & the Law Outline (1980); Wenig, Marital Status & Taxes, Ch. 5 of Douthwaite, Unmarried Couples & the Law (Allen Smith Co. 1979)

entity such as a corporation or trust in which the other spouse has a substantial interest;

2) Those that provide different tax rates; and

3) Those that deny or limit deductions and credits.

The first category of provisions is the most easily justified because most of the provisions do not single out the marital relationship. For the most part, they apply equally to transactions that take place between the taxpayer and other members of his family such as his or her children or his or her parents. Section 267 is an example; it disallows a loss deduction for sales between a taxpayer and his or her spouse and for sales between a taxpayer and his or her brothers, sisters, parents and children. Section 1239, another example, converts gain on sale of depreciable property to spouse or controlled corporation from capital gain to ordinary income. These provisions reflect a legislative determination that a taxpayer who makes a sale to a close relative or controlled corporation does not actually termin his economic interest in that asset. This assumption may or may not be true in a particular case but is apparently true in the majority of cases that fall within the provision. Other provisions in this category are based on the same kind of rationale. The inclusion of spouses within the list of related taxpayers to which these provisions apply seems justifiable.

The provisions within the other two categories, however, apply only to spouses and are difficult if not impossible to justify.

A. The tax rates components

1. The tax rates

Tables III and IIIA, above show the tax cost of marriage by comparing the tax due on a joint return with tax due on separate returns filed by paired but unmarried taxpayers with the same combined income. As these Tables show, almost whatever the income, if 90% or more of it is earned by one married partner, the couple saves taxes by being married. This is the circumstance in which the tax law imposes a penalty on unmarried taxpayers because of their unmarried state.

On the other hand, if one partner earns from 25% to 50% of the couple's income, in all income brackets except the lowest, the couple, for tax purposes, is better off unmarried. Even where one partner earns as little as 20% of the couple's total income, at most tax brackets, being married costs more than being unmarried.

The larger tax, shown in Table III, imposed because a couple is married (the marriage penalty tax), may be reduced for some couples if, instead of filing joint returns, they stay married but file separate returns. This may be a function of the rate tables (see Table II-A above) and also of the floor that adjusted gross income imposes on the deduction of medical expenses. But even married taxpayers who lower their taxes by filing separate returns pay more than singles, and thus pay a marriage penalty tax.

The amount of the marriage penalty tax is even larger if one or both of the cohabitants can qualify as an (unmarried) surviving spouse or an (unmarried) head of household. See Tables IV and V, above.

2. The 50% max-tax

Built into these Tables, which show the tax cost of marriage, is an effective stop on the upper limit of the marriage penalty tax. This stop is provided by the 50%

maximum tax ceiling rate, applicable to personal service or "earned" income. This stop is not applicable to "unearned" income such as dividends, interest and rents. (IRC §1348).

If the taxable income on a joint return is $60,000 or more and if it is all earned income, the total tax will be equal to exactly 50% of the total taxable income, less a flat $10,322. A single person with at least $41,500 of taxable income from earnings pays a tax of 50% of his taxable income, less a constant $7,358. Thus, the maximum adverse tax effect of marriage on two such single persons is determined by the difference between the total of the two $7,358 offsets they had as singles, or $14,716, and the $10,322 offset they get as a married couple filing jointly. This difference is $4,394 (see Table III-A, above), which is the most marriage can cost if both spouses have worked up to the 50% bracket and have no unearned income. (On the other hand, the extra savings a single person earning $60,000 or more gets by marrying a nonearning spouse is measured by the difference between his $7,358 offset while single and the $10,322 offset on a joint return, a difference of $2,964). (Hall at 718).

While the $4,394 cost of marriage is a sizeable dollar amount to the higher income tax bracket husband and wife, each of whom earns $41,500 or more, the burden of the marriage penalty tax, from a proportion of total tax point of view, falls, therefore, on the lower income tax bracket two-earner couple.

Married taxpayers who file separate returns are not permitted to use the 50% max-tax (IRC §1348(c).) Therefore, when the personal service or earned income of such a taxpayer exceeds $30,000, his next dollar of personal service or earned income will be taxed at 54%, until the rate jumps to 59% for the next dollars over $42,800. His marriage penalty tax results not only from the higher rate schedule applicable to married taxpayers filing separate returns but also to the failure of the 50% max-tax to put a brake on the progressivity of the rates.

The 50% max-tax ceiling rate does not operate as a stop to the upper level of the marriage penalty tax if the joint return reflects unearned income.

What advice do you give to Taxpayers M and S? Taxpayer M has dividend income of $150,000; he has no earned income. Taxpayer S has an annual salary of $100,000. M's itemized deductions amount to $15,000; S's are $10,000. Neither has any children and both are unmarried. M's annual tax liability will be $75,297. S's annual tax liability will be $38,292. Their combined tax will be $113,589. If M and S marry, their annual tax liability will increase by $10,145 to $123,734. Without increasing their income nor, necessarily, effecting economies in life-style, by saying "I do," they have increased their effective tax rate from 45% to 50% and given the government an annual nondeductible contribution of $10,000.

3. The additional tax on tax preference items

The additional tax on tax preference items is still another element of the tax rate component of the marriage penalty tax.

As a result of special deductions and deferrals of tax liability, Congress believed that some taxpayers were permitted tax advantages which were not available to others. To redistribute the tax burden, Congress enacted a 15% tax to be imposed, in addition to other taxes, on certain tax preference items (IRC §56.)

In figuring this 15% tax for an individual, the total of tax preference items is reduced by an exemption of the greater of $10,000 or one half of the regular income tax for the year. This $10,000 exemption amount is reduced to $5,000 for a married person filing separately (IRC §58(a).)

In addition to this add-on tax of 15%, the tax law now imposes an alternative minimum tax in graduated rates of 10%, 20%, and 25% on an individual taxpayer's alternative minimum taxable income, i.e., his taxable income plus the amount of the capital gains deduction and certain itemized deductions (IRC §55.) The tax so computed is assessed only if it exceeds the regular tax. A married taxpayer who files a separate return is required to compute this alternative minimum tax by doubling his alternative minimum taxable income and then dividing the resulting alternative minimum tax in half (IRC §58(a).) The effect of this requirement is to impose a more steeply progressive rate of alternative minimum tax on this taxpayer than would be imposed on him if he were single.

B. The deduction, credit and exclusion components

Some credits and deductions or exclusions are allowed to a married taxpayer only if he or she files a joint return or, for some provisions, lives apart from his or her spouse for the full year. These circumscribed benefits include the earned income credit (IRC §43), the child and dependent care credit (IRC §44A), and the exclusion of unemployment compensation (IRC §85) and of certain disability payments (IRC §105(d).)

Certain deductions or exclusions have dollar ceilings. Although two single taxpayers are allowed, between them, two ceiling amounts of the deduction or exclusion, once they marry they are allowed only one ceiling deduction or exclusion or a deduction which is less than two times the ceiling deduction available to a single taxpayer. These ceiling deductions or exclusions include the zero bracket amount (IRC §63), the deduction for excess interest on investment indebtedness (IRC §163(d)), the deduction for moving expenses (IRC §217), the deduction for capital losses against ordinary income (IRC §1211(b)) and the exclusion of gain from sale of residence (IRC §121.)

Some credits, deductions or exclusions are limited by the taxpayer's income and are therefore decreased in amount or denied entirely for two taxpayers who marry and aggregate their income on their joint return. Examples include the exclusions for unemployment compensation (IRC §85) and for disability payments (IRC §105(d)), the deduction for medical expenses (IRC §213), and the child and dependent care credit based on expenses which cannot exceed the lesser earner's income (IRC §44A.)

1. Zero bracket amount

The zero bracket amount, or ZBA, (IRC §63.) is built into the tax table. An unmarried taxpayer has a ZBA of $2,300. Two taxpayers therefore have two ZBA's of $2,300 apiece or $4,600. If they marry and file a joint return, aggregating their income, their ZBA is only $3,400. A taxpayer who qualifies as a "surviving spouse" obtains the benefit of the joint return tax rate, is allowed a ZBA of $3,400 and, with planning, can avoid aggregation of his or her income with the income from his or her deceased spouse's estate.

If a married couple file separate returns, each is permitted a ZBA of only $1,700 and the tax of each is computed on the highest tax rate schedule, applicable to married taxpayers filing separate returns.

2. Earned income credit

The earned income credit (IRC §43) is equal to 10% of earned income up to $5,000 or $500. This credit is phased out gradually above $6,000 of income by a reduction of 12.5% of adjusted gross income in excess of $6,000. Therefore a taxpayer with adjusted gross income of $10,000 or more cannot claim this credit.

The earned income credit may be claimed by married or surviving spouse taxpayers with dependent child who lives with them or by head of household taxpayers with child or grandchild, not necessarily dependent, who lives with them.

The earned income credit cannot be claimed by married taxpayers unless they file a joint return. If both spouses are otherwise eligible for the credit and if each has $6,000 of earned income (which would give each a $500 credit) they cannot claim their credits on separate returns. And if they file a joint return their income totals $12,000; they have therefore lost the $1,000 worth of refundable credit and, in addition, must pay a tax.

What advice would you give to taxpayers A and B? Each is unmarried, has one dependent child, and adjusted gross income of $6,000. Each qualifies as head of household. The 1979 tax table shows that the tax on A's $6,000 income is $235, against which is allowed the $500 earned income credit, producing a refund for A from the federal government of $265. The figures are the same for B. If they marry, they would receive no credit and would owe an annual tax of $698. Their annual tax cost of marriage amounts to $1,228, more than 10% of their combined annual income.

3. Child and dependent care credit

Married taxpayers must file a joint return in order to be able to claim the child and dependent care credit (IRC §44A) which can reduce their tax by as much as $800. This credit is 20% of certain household services and child and dependent care expenses, up to a maximum of $2,000 of expenses if there is one qualifying child (dependent under 15) or other dependent (physically or mentally incapacitated), and up to a maximum of $5,000 if there are two or more such dependents. The household and dependent care expenses cannot exceed the amount of the taxpayer's earned income. If the taxpayer is married, the expenses which produce the credit cannot exceed the earned income of the lesser earner spouse unless he or she is a full-time student or physically or mentally incapacitated.

What advice do you give to Widower? His wife died last year, leaving two small children. He has been fortunate in obtaining a live-in housekeeper. His adjusted gross income is $14,000. He pays his housekeeper $3,300 and incurs expenses, because of her employ, of an additional $700 on account of her room and board which is not includible in her gross income. She has no income tax to pay. The tax table shows that the tax on his $14,000 income is $1,247, less the $800 child care credit, or $447. If Widower marries his housekeeper, his tax is $1,058.

4. One-time exclusion of gain from sale of home

A taxpayer who is 55 years or older can exclude from taxable income up to $100,000 of gain realized on the sale of a residence, if it has been the taxpayer's home for three years or more during the five year period ending on date of sale (IRC §121.) If the taxpayer and spouse own the property jointly, only one of them need satisfy the age and home requirement. But even if the home is owned by one of the spouses only, and that spouse qualifies for the exclusion, if he or she files a separate return the $100,000 exclusion is cut in half.

This is a once in a lifetime exclusion. If a taxpayer has elected the exclusion before or after his marriage, his spouse is, apparently, forever foreclosed from electing the exclusion even though their marriage has been terminated by death or divorce. The Joint Conference Committee Report states that there is to be only one lifetime exclusion with respect to married individuals; the election does not apply separately to each spouse. The report kindly adds that if each taxpayer has made the election independently prior to becoming married, there is to be no recapture of the taxes attributable to the gain excluded with respect to the sale of one of the residences, thus averting a wedding present of a marriage penalty tax but not other marriage costs imposed by IRC §121.

5. Exclusion of Unemployment Compensation

Unemployment compensation is required to be included in gross income, but only to the extent of the lesser of the amount of the unemployment compensation or one-half of the excess of the sum of the unemployment compensation received plus the taxpayer's adjusted gross income over a base amount (IRC §85.) That base amount is $20,000 if taxpayer is unmarried or if he is married but has lived apart from his spouse at all times during the taxable year. If he is married and files a joint return, that base amount is increased to $25,000 but, in order to exclude any portion of his unemployment compensation from his gross income, his unemployment compensation plus his own adjusted gross income for the year plus his spouse's unemployment compensation plus her adusted gross income for the year must be less than $25,000.

If taxpayer is married but does not file a joint return and does not live apart from his or her spouse for the entire year, taxpayer's base amount is zero with the result that at least one-half of his unemployment compensation is includible in his gross income. All of his unemployment compensation is includible in his gross income if his adjusted gross income (without regard to the unemployment compensation) for the year is in an amount equal to or in excess of his unemployment compensation.

If taxpayer is single and receives any amount up to $15,000 of adjusted gross income plus $5,000 of unemployment compensation, no penny of his $5,000 unemployment compensation will be taxed. If, however, he is married but separates from his spouse, with whom he has lived only a few days in the year, and if he does not file a joint return for the year, every penny of his $5,000 unemployment compensation will be taxed even if his adjusted gross income (other than his unemployment compensation) is only $5,000.

6. Exclusion of Disability Payments

The first $100 a week of disability payments to a taxpayer who has retired before age 65 on account of permanent and total disability are excluded from his gross income (IRC §105(d).) However the permissible amount of the exlcusion is reduced by the excess of taxpayer's adjusted gross income over $15,000.

In order to obtain the exclusion at all a married taxpayer must file a joint return, unless he and his spouse live apart at all times during the year. Not only taxpayer's but also his spouse's adjusted gross income must be taken into account for the purpose of reducing the exclusion. Thus, if wife's adjusted gross income is $17,500 and her husband is retired and receives permanent and total disability payments of $50 a week, or $2,600 for the year, only $100 of his disability payments can be excluded from their gross income.

7. Deduction of medical expenses

The deduction for medical expenses of a taxpayer, his spouse and his dependents is limited to the amount of unreimbursed medical expenses which exceeds 3% of adjusted gross income (IRC §213.) The aggregation of spouses' income on a joint return increases the nondeductible portion of the medical expenses of each spouse and of each spouse's dependents.

8. Deduction of moving expenses

If two unmarried taxpayers move more than 35 miles on account of their employment, each can deduct moving and traveling expenses (IRC §217.) Included among these deductible expenses are costs of selling or leasing the former residence and leasing the new residence, up to a total of $3,000. The $3,000 limit (and an internal $1,500 limit) applicable to each unmarried taxpayer is also applicable to two taxpayers who are married. If they file separate returns the limit for each is halved to $1,500 (and $750) apiece.

9. Deduction of excess interest on investment indebtedness

The dollar limitation on deduction for excess interest on investment indebtedness is $10,000 for an individual taxpayer, or $20,000 for two single taxpayers (IRC §163(d).) A married couple is limited to $10,000. This $10,000 ceiling is cut down to $5,000 if a married taxpayer files seperately, even if all the investment interest is his.

10. Deduction of capital losses

Capital losses are deductible against capital gains and, to the extent that they exceed gains, are deductible to the extent of $3,000 of ordinary income (IRC §1211(b).) Even if both spouses incur net losses, the deduction is limited to $3,000. If a married taxpayer files seperately, this $3,000 deduction is cut down to $1,500 even if all of the net losses are his.

11. Other deductions as components of the nonmarriage penalty tax

Some benefits or deductions are doubled for married couples. The dollar limitation on additional first-year depreciation allowance for small business is $10,000; for husband and wife who file a joint return the limitation is increased to $20,000 (IRC §179.)

The maximum credit for political contributions is $50, doubled to $100 for joint returns (IRC §41.). The alternative deduction for political contributions is $100, doubled to $200 for joint returns (IRC §218).

A taxpayer can treat up to $50,000 of loss on small business stock as an ordinary loss (IRC §1244.) If he is married and files a joint return he can deduct up to $100,000.

In each case, there is no requirement that a taxpayer file a joint return. But in each case, if taxpayer files a joint return he can double the benefit of the deduction or credit, without regard to whether his spouse incurred any portion of the depreciation allowance or loss or paid any portion of the political contribution and without regard to whether the income sheltered by the doubled deduction is all his or part his and part hers.

What can we ascertain from these abberational marriage bonus provisions? Is it that Congress is in favor of political contributions, likes to invest in small business, but wants to hedge their bets on their small business investments?

IV. The Anomalous and Varied Marital Status Definitions

Among the most common errors made by taxpayers and tax return preparers is the choice of the wrong tax table.

This is not surprising.

There are four different tax tables. Each is labeled with a term -- married, surviving spouse, head of household, single -- the meaning of which appears self-evident. Yet each of these terms requires pages of Code sections and cross-referencing to other Code sections and, in some cases, to volumes of judicial decisions to determine its meaning for income tax purposes.

Many of these definitions come as a shock. For income tax purposes a couple is married if they are married on December 31 (IRC §143(a)(1).) But -

A taxpayer may be married, even though his spouse is dead (IRC §143(a)(1).)

Although a taxpayer is married in years 1955 through 1960 and files joint returns for those years with his wife, who had no income of her own, IRS can and will reassess his tax on a separate return basis and in 1964 charge him with deficiencies for 1960 and earlier years because his marriage was annulled in 1961. (*Chap* 23 TCM 132)

Although a couple is married, they are not married for income tax purposes if they have a legal separation decree (IRC §143(a)(2).)

Although a couple is divorced, they are still married if the divorce decree is interlocutory (Treas. Reg. §1.6013-4(a).) Although they are still married on December 31 of the year in which they obtain the decree, if one of them dies after December 31 but within the interlocutory period, they are not married as of that December 31. (Rev. Rul. 75-536)

Although a couple's foreign divorce unmarries them on December 31, their subsequent remarriage the next year means that they are married as of that December 31. (Rev. Rul. 76-255.) But that same December 31 divorce followed by cohabitation unmarries them (LR 7835076.)

Although A is married to B, B may not be married to A (IRC §143(b).)

If there are enough dependent children for B to have one and for A to have one also, A may not be married to B, either. (IRC §143(b))

What's more, both A and B who are married to each other, or one of them, may, or, then again, may not be unmarried head of household. (Compare IRC §2(b)(1)(A) with IRC §143 (b)(1).)

While a married taxpayer may be unmarried if his spouse doesn't live with him for the full year and his dependent child lives with him for six months and a day (IRC §143(b)), that married taxpayer is an unmarried head of household only if his child lives with him for the full year (IRC §2(b)(1)(A).) But if his dependent child lives with him for only six months and a day, this married taxpayer is nonetheless an unmarried head of household if a self-supporting child or grandchild lives with him for the full year (IRC §2(b)(1)(A)(i) even though taxpayer would be married and therefore not an unmarried head of household if his only child were self-supporting.

Although X is married to Y, if Y is a nonresident alien X may be a married taxpayer required to file separate return (IRC §6013.) X may also be an unmarried head of household (IRC §2(b)(2)(C).) But although X is an unmarried head of household, since he is married and did not file a joint return he cannot use the 50% maximum tax on personal service income (IRC §1348(c)).

Are you confused?

Are taxpayers confused?

Are tax return preparers confused?

I don't know why not. IRS itself is confused. The Wall Street Journal (7/19/78) reports this experience of one unhappy taxpayer. (Forrest, 37 TCM 1033):

> "Gene lived apart from his wife pending their divorce. He asked the IRS how to file. Jointly with his wife, or as single head of household, the IRS advised. He used head of household, for it meant less tax. Later, the IRS said he didn't qualify as head of a household and owed $215 based on rates for single taxpayers. He agreed to pay. But then the IRS said he wasn't legally separated so he couldn't file as 'single' and owed $812 based on rates for married filing a separate return.
>
> "However, he appealed to an IRS conferee who cut the amount to $142. Gene gave him a check. The IRS returned the check and demanded the $812. The IRS didn't tell Gene he could amend his return and file a joint one with his estranged wife to avoid the added tax. Nor did it tell him that if he appealed the matter to the Tax Court that would bar him from amending his return. He appealed to the court but didn't get any relief there.
>
> 'Misrepresentations of law were consistently made' by the IRS, but that didn't block the agency from collecting the $812, the court said."

The "Innocent Spouse" Who Pays

The joint return has several categories of tax victims: both husband and wife of the two-income married couple; the married taxpayer who, voluntarily or involuntarily, files a separate return; and the unmarried taxpayer.

The one-earner married couple is the beneficiary of the joint return advantages.

But the greatest victim, of all, of the joint return, or of the natural income-splitting of community property income, upheld by *Poe v. Seaborn* (282 US 101), may be the non-earner spouse of the one-earner married couple if that spouse is "'the innocent spouse' who pays."

Joint filers are jointly and severally liable for the tax reported due on a joint return and for the tax ultimately held due for the tax period covered by the joint return (IRC §6013(d)(3)). As a result, a wife has been held liable for the tax deficiency imposed on account of the omission from the joint return of income realized by her husband because of his embezzlement from her and her sisters' business (*Scudder* 48 TC 36). A husband who had been caught attempting to smuggle jewelry through customs was held liable for additional tax for the tax year in which he was convicted because the informer's fee his wife received from customs for turning him in had not been reported on their joint return. (Hall at 720).

The enactment in 1971 of IRC §6013(e) relieves the "innocent spouse" of his or her liability but only under rather rigorous conditions, each of which must be satisfied. The tax deficiency must arise on account of the filing of a joint return and on account of the omission from the joint return of gross income. The innocent spouse is not relieved from liability for deficiencies arising, for instance, from overstatement of deductions or characterization of receipts as capital gains rather than ordinary income or overstatement of cost of goods sold. The omission from income must exceed 25% of the gross income stated in the return. If the omission equals 24% of the gross income, as innocent as the innocent spouse may be, she or he is liable for the deficiency. The innocent spouse must prove that she or he did not know and had no reason to know of the omission. If the innocent spouse can satisfy these conditions, the matter then rests "with the Chancellor's foot." On the basis of whether the innocent spouse significantly benefited directly or indirectly from the omitted income and other facts and circumstances, the court must find it inequitable to hold the innocent spouse liable.

The cases proliferate and go both ways. For instance, where four years after the first taxable years in question, the divorce court, after a bitter contest, awarded half of the marital property to the wife, a district court permitted IRS to satisfy the full joint return deficiency from her share. (Busse 36 AFTR 2d 75-5927). On the other hand, where wife received a lump sum alimony payment of almost the same amount, the Tax Court said that this was not benefit but support. (Terzian 72 TC No. 96). A wife, who as active Jehovah's Witness and good Christian wife, never questioned her husband, was an innocent spouse (Zinser, TCM 1978-256). But a husband whose wife did not give him copies of their tax returns "knew or should have known" of the omission and was held liable. (Adams 60 TC 300).

What is important is the reason for these innocent spouse cases. They usually arise when the not-so-innocent spouse is dead, often by suicide, or has run off or is in jail. The liability imposed by the joint return permits IRS to ease its tax collection task. Congress can add more details to IRC §6013(e) to aid the innocent spouse who pays. The way of simplification, however, lies in the single return route.

The community property innocent spouse to whom the tax law attributes half of the other spouse's income is liable for the tax on that income, which she or he may never see or know of, even without filing a joint return. And it is only when a joint return is filed that the community property innocent spouse can be protected by IRC §6013(e). The Internal Revenue Service pursues the policy of attempting to collect the tax from the wife (typically) because of the prospect of "costly litigation" if it proceeded against the husband on the theory that he is the trustee for the community property (CCH Rewrite Bull, ¶8144 (1977)). Fifth Circuit Judge Clark stated in a recent case, involving abandoned wives who lived in "grinding poverty," that

> "The tax demanded is a federal tax imposed on income. Even though state law attributes income to these women, the federal law knows they never saw it, received it or benefited from it....I would insist that the substance of reality mandates that this federal harassment merely to enforce the technical form of state civil law must stop herewith."
> (*Bagur*-603 F2d 491 (1979)).

The U.S. General Accounting Office agrees, proposing in 1977 a community property innocent spouse amendment to IRC §6013 (CCH Rewrite Bull. ¶8144) which, however, was not enacted.

IRC §6013(e) itself suggests the cure. If community property spouses file a joint return and there is the required over-25% omission of gross income and the other conditions are met, the community property innocent spouse is the one to whom the omitted income is not attributable. To determine attribution, Poe v. Seaborn is overruled; "the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws" (IRC §6013(e)(2)(A)).

I. The Self-Help Solutions*

We have examined the history and consequences of the fourfold rate structure and the demography and components of the marriage penalty tax. We have identified the victims of the tax and posed a number of examples to illustrate the arithmetic of the marriage penalty tax.

What advice did you give to the taxpayers described in these examples?

Was your advice this? Don't get married. Or, get divorced.

Marriage should be a tax neutral event. No tax penalty should be imposed on those who marry or remain married unless there are very compelling reasons for imposing such a tax penalty. Tax theories on the appropriate tax unit and assumptions of the necessity of taxing alike all married couples with the same taxable income, regardless of each spouse's contribution to that income, do not supply these compelling reasons.

Whatever the theory or assumption, taxpayers today take taxes into account in deciding to marry or to divorce.

We can say blithely, as Professor Edwin S. Cohen, Assistant Secretary for Tax Policy and Under Secretary of the Treasury from 1969 to 1972, said in a 1973 speech to the American Bar Association Family Law Section:

> "We may have to reconcile ourselves to some differences in the income taxes of the wedded and the unwedded state. If this were to cause two young working people to sharpen their pencils, it might perhaps give them a reason for not marrying that their parents could understand. And if it should cause a wedded couple to dissolve their marriage, it might indicate that tax policy sometimes makes estranged bedfellows."

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*Wenig, Marital Status & Taxes, Chapter 5, Douthwaite, Unmarried Couples & the Law (Allen Smith Co. 1979)

But let us look at the most favored tax status—married and divorced in contemplation of cohabitation.

Married couples have obtained year-end divorces in order to be taxed as unmarried taxpayers. (Boyter, pending TC case). If they remarry, the IRS says that it will refuse to recognize the divorce. (Rev. Rul. 76-255). If they divorce and cohabit instead, the IRS says it will recognize the divorce and the unmarried status of each of the former spouses. (LR 7835076).

Unmarried cohabitants who want share-and-share-alike living arrangements will find these arrangements ineffective in splitting income for income tax purposes. (Lucas v. Earl, 281 US 111). In addition, these arrangements may incur a gift tax and an increased estate tax, unalleviated by the marital deduction. (Rev. Rul. 77-359). But the Code provides an effective substitute, with the application of a little foresight. Get married, and then get divorced.

The solution for the couple whom the income tax laws would render asunder is to "enter into a written agreement relative to their marital and property rights." (IRC §2516). If the agreement provides for the division of their assets and divorce follows within two years there will be no gift tax due on any transfer from the have to the have-not ex-spouse. If the transfer is made not to satisfy the obligation of support but by way of the split-up of jointly held or community property (Rev. Rul. 69-471), or in a state whose equitable division of property on dissolution of marriage is recognized as a "new species of common ownership" (Imel, 523 F2d 853), the transferor may transfer appreciated property without being taxed on the gain. Otherwise the transfer should be of cash and property with value no greater than basis.

By way of future income, gift and estate tax planning, the couple can agree that each has a continuing obligation to support the other (see Orr, 440 US 268 (1979)), and that therefore, the ex-spouse whose income for any taxable year exceeds 50% of the aggregate income of both in that year should pay that excess to the other ex-spouse. This income splitting by agreement, because of the alimony provisions of the Code, and because of the progressive income tax rates, reduces the overall tax on both incomes, unless the fact that the 50% maximum tax ceiling rate on personal service income does not apply to alimony intervenes. No gift or estate tax marital deduction is available but no such deduction is needed. These payments are not gifts and, because of them, the equal division of the ex-spouses' estates is continued.

If there is one child, careful structuring of the support obligation under the separation agreement can give the dependent's personal exemption deduction to one of the ex-spouses and the advantage of the head of household tax rate to the other, as long as that other furnishes over half of the cost of his and the child's common household. (IRC §2(b)). If the child is under the age of fifteen and there are child-care expenses which will provide a tax credit, the couple can agree that the parent who is entitled to claim the child as a dependent should have the custody of the child. (IRC §44A). The fact that one parent may then have all of the tax advantages of the child-care expense credit, the personal exemption deduction for the child, the head of household rate and the deduction for the child's medical expenses can be taken into account in splitting the couple's taxable income between them. If there are two or more children, each parent may be entitled to all of these tax advantages. Even if the divorced couple, now unmarried cohabitants, live together under the same roof, it may be possible, with careful planning and record keeping, to assert that there are two separate households. (Fleming 33 TCM 619).

One of the cohabiting pair can now itemize deductions without depriving the other of his right to his full $2,300 zero bracket amount. And the payor of alimony or separate maintenance can deduct his payments from his gross income and also be entitled to his full $2,300 zero bracket amount (IRC §62). Therefore the pair can plan that the alimony recipient be obligated to pay and therefore deduct real estate taxes and mortage interest.

Is this the kind of tax advice we want to be in a position to give to the husband and wife in the intact marriage?

VII. Recommendations

There are reasons to marry and reasons to cohabit unmarried. Certain consequences ensue from the marriage relationship and others from the unmarried cohabitants' relationship. Taxes should not assume such a substantial place among these reasons and consequences.

The answer is not to complicate the Code further by additional distinctions and differentiations and new credits or deductions.

A LEXIS scan of the Internal Revenue Code of 1954, as amended through 1978, using the search words joint return, separate return, spouse, wife, husband, married, unmarried, living apart, living separately, and separated, produced 284 references to Code sections and subsections. Definitional, repetitive, obsolete and irrelevant references, and references to attribution rules which were not limited to spouses, but also included familial and other relationships, were winnowed out and references to provisions outside of Subtitle A--Income Taxes were also eliminated. Among the remaining income tax sections which turn on these marital status words are:

§1. Tax imposed
§37. Credit for the elderly
§41. Contributions to candidates for political office
§44A. Expenses for household and dependent care services
§46. Credit for investment in certain depreciable property
§48. Special rules for credit for investment in §38 property
§50A. Credit for expenses of work incentive programs
§58. Special rules for tax on tax preference items
§63. Taxable income defined
§105(d). Exclusion of certain disability payments
§163(d). Limitation on interest on investment indebtedness
§179. Additional first-year depreciation allowance for small business
§217. Moving expenses
§913. Deduction for certain expenses of living abroad
§1211. Limitation on capital losses
§1244. Losses on small business stock
§1251. Gain from disposition of property used in farming where farm losses offset nonfarm income
§1302. Definition of averageable income
§1348. 50 percent maximum rate on personal service income

Each of these provisions can be examined for its tax impact on marriage and nonmarriage. A step toward simplification can be taken if these sections are purged of distinctions based on marital status.

IRC §1 should be amended to provide for one rate schedule for all individual taxpayers at rates consistent with the revenue needs of the federal government. The present fourfold rate schedule, which imposes different rates of tax on married taxpayers filing jointly and surviving spouses, heads of household, unmarried taxpayers (other than surviving spouses and heads of household), and married taxpayers filing separate returns, should be eliminated.

Married taxpayers should not be required to aggregate their income, just as surviving spouses and heads of household are not required to aggregate their income with dependents or children who permit them to qualify as surviving spouses or heads of household.

If spouses elect to aggregate their income and pay the tax on the aggregated income, they should be permitted to do so.

The doctrine of *Lucas* v *Earl* (281 U.S. 111), that earned income is taxed to the person who earns it, should be reaffirmed for all purposes of the income tax law and for all taxpayers, whether domiciled in common law or in community property states. That doctrine is embodied now in the following provisions of the Internal Revenue Code:

> §37. Credit for the elderly. This section requires that a married couple file a joint return and states that, with respect to public retirement system income, §37(e) "shall be applied without regard to community property" laws.

§43. Earned Income. For the definition of earned income, for the credit for earned income, §43(b)(2)(B)(i) states that "the earned income of an individual shall be computed without regard to any community property laws."

§219. Retirement savings. §219(c)(2) provides that the maximum deduction for contribution to an individual reitrement account "shall be computed separately for each individual and this section shall be applied without regard to any community property laws." See also §408(g).

§220. Retirement savings for certain married individuals. §220(c)(2) provides that "this section shall be applied without regard to any community property laws."

§402. Taxability of beneficiary of employees' trust. §402(e) which provides for the 10 year averaging computation of tax on lump sum distributions is to be applied "without regard to community property laws." §402(e)(4)(G)

§404. Deduction for contributions of an employer to an employees' trust. The floor on deductible contributions for self-employed individuals is stated not to be applicable "to any employee whose adjusted gross income... (determined separately for each individual, without regard to community property laws...) exceeds $15,000. §404(e)(4)

§457. Deferred compensation plans with respect to service for state and local governments. §457(d)(7) provides that "the amount of includible compensation [which determines the ceiling for deferral] shall be determined without regard to any community property laws."

§879. Treatment of certain community income in the case of resident or citizen of the United States who is married to a nonresident alien individual. §879(a)(1) provides that for a citizen or resident of the United States who is married to a nonresident individual and who has community income, "earned income (within the meaning of section 911(b)), other than trade or business income and a partner's distributive share of partnership income, shall be treated as the income of the spouse who rendered the personal services." See, also, §981(b)

§911. Income earned by individuals in certain camps. This section exempts earned income of certain individuals from taxation. §911(c)(3) provides that, in applying the $20,000 limitation, "with respect to amounts received by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount excludable... from the gross income/of such husband and wife shall equal the amount which would be excludable if such amounts did not constitute such community income."

§958. Coordination of United States and Guam individual income taxes. §935(b)(3) states that "in the case of a joint return,... [the filing requirements imposed by §958(b)] shall be applied on the basis of the residence and citizenship of the spouse who has the greater adjusted gross income (determined without regard to community property laws) for the taxable year."

§1303. Eligible indivduals [for income averaging.] §1303(c)(2)(C) states that an individual is not eligible for income averaging if for any base period year, he (and his spouse) furnished less than one-half of his support, unless not more than 25% of his joint return's aggregate adjusted gross income is attributable to him. For this purpose, "amounts which constitute earned income (within the meaning of section 911(b)) and are community income under community property laws applicable to such income shall be taken into account as if such amounts did not constitute community income." See, also, §1304(c)(3).

§1402. Definitions [for tax on self-employment income.] §1402(a)(5)(A) attributes all of the community property income from a trade or business to the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case the income is attributable to her. §1402(a)(5)(B) attributes all of the income from a partnership which is community income to the partner and none to the spouse of the partner.

§6013(e) Spouse relieved of liability [for tax due on joint return] in certain cases. Under limited circumstances, an "innocent spouse" is relieved of liability for tax due on a joint return on omitted income attributable to the other spouse. For this purpose, §6013(e)(2) provides that "the determination of the spouse to whom items of gross income "other than gross income from property) are atttibutable shall be made without regard to community property laws."

There is no constitutional barrier which prevents Congress from providing for all purposes that earned income should be taxed to the one who earns it, without regard to community property laws. Congress has assumed this, in its enactment of the provisions described above. Cf. Fernandez v Weiner, 326 U.S. 340 (1945) in which the Supreme Court upheld, against constitutional attack, the 1939 Code provision which from 1942 to 1948 included 100% of community property in the estate of the first spouse to die, in order to equate estate tax treatment of spouses in common law and in community property states.

If spouses own property jointly, or as community property, income from that property can be taxed one-half to one spouse and one-half to the other spouse, in accordance with their ownership of the property. Income from property transferred to one spouse by the other spouse can be taxed to the spouse who is the actual owner of the property. Various judicial and statutory tests have been developed since 1948 to test ownership. These tests, applicable not only to spouses, include the "Clifford trust" rules of Subpart E of Subchapter J and §704(e), with respect to family partnerships.

These spouses who do not elect to aggregate their income can, nonetheless, file joint returns. These joint returns will not be joint for the purpose of computing their taxes or for the purpose of assigning joint and several liability. Instead, the joint return can be one which, like the State of New York income tax return for spouses, is a joint return for administration purposes only. It is one return, with two columns, one column reporting the taxable income of the husband and the other, the taxable income of the spouse.

Exemptions, deductions and credits can be allocated in one of several ways: split 50-50; allocated in accordance with gross income; attributed to the

best copy available

pouse who incurs the expense which gives use to the deduction; or allocated, s New York does for nonbusiness deductions, as the spouses may determine.

Repeal of income aggregation for married couples will not require repeal f the alimony provisions of IRC §71 and §215. These sections were enacted in 941, several years before the 1948 enactment of joint returns and many years efore the 1969 enactment of the fourfold rate schedule which, in effect, prouced mandatory income aggregation for married couples. Nor would repeal of ncome aggregation for married couples require, for consistency, repeal of the state and gift tax marital deduction. Treatment of married couples as partners r transfer tax purposes is not inconsistent with the taxing of income earned a partner to that partner. Without the transfer tax marital deductions or xfree interspousal transfers, community property spouses are still preferred er other spouses by the Internal Revenue Code.

Adoption of the statement's recommendations will aid in the desired mplification of the Internal Revenue Code and eliminate both the marriage nalty tax and the nonmarriage penalty tax. Marriage and nonmarriage should tax-neutral events. An Internal Revenue Code designed for such neutrality ll be an easier law for every taxpayer and tax collector to live with.

Citations

p.1 Surrey, Federal Taxation of the Family - The Revenue Act of 1948, 61 Harvard L. Rev. 1097 (1948)

p.3 Bittker, Federal Income Taxation and the Family, 27 Stanford L. Rev. 1389 (1975)

p.17 The Census Bureau and Department of Labor data was taken from a variety of sources, including Bureau of Census, Current Population Reports, Population Characteristics, Marital Status and Living Arrangements: March 1976 (Series P-20, No. 306, Issued January 1977); Report of Martha Phillips, Assistant Minority Counsel, Committee on Ways and Means, US House of Representatives (8/4/77); "Women with Low Incomes," Women's Bureau, US Department of Labor (1977); New Approaches to Statistics on the Family, Monthly Labor Review 31-34 (7/77); Three-part Series on Men & Women, NY Times, (11/27-29/77); Wall Street Journal (2/2/76)

p.18 October 22, 1979 letter of Emil Sunley, Deputy Assistant Secretary, Department of the Treasury, to Congressman Don Edwards, in response to Congressman Edwards' request for information on the cost of allowing married couples to file as single individuals as proposed by Congresswoman Fenwick. For the 1974 figure, see McCaffrey, Income Taxation of Husband and Wife and the Marriage Tax Penalty, 10th National Conference on Women and the Law Sourcebook 27, 28 (1979)

p.23 Hall, The Working Woman and the Federal Income Tax, 61 ABA Journal 716 (1975). I am indebted to Judge Hall for the method of determining the dollar amount of the marriage penalty tax on married taxpayers whose aggregate income is personal service income, subject to the 50% maximum tax.

TATEMENT OF SAMANTHA SANCHEZ, ASSISTANT PROFESSOR OF LAW, CATHOLIC UNIVERSITY OF AMERICA SCHOOL OF LAW

Ms. SANCHEZ. My name is Samantha Sanchez. I am assistant profes-
or of law at Catholic University, and I would like to submit for the
ecord a statement which is excerpted from the interim report to the
resident by the Civil Rights Division of the Department of Justice
ecommending that the tax structure be reformed to a pre-1948 in-
ividual filing status.

I have presented this excerpt to you because there are some charts
hich I would direct your attention to on pages 25 and 26. I am sure
the past day you have heard a lot of figures about where the mar-
age penalty falls. And since marriage penalty, as you know, is a
nction of each couple's earned-income level and the submission of
e total income between the two people, it is always difficult to pre-
ct, just using the rate schedules, who will pay and where the burden
the marriage penalty will fall.

The IRS in 1974 collected statistics on who pays how much of the
arriage tax. And those statistics, while woefully out of date, are
e only evidence that we have of where the penalty is actually paid.

On page 26 you will see that there is a 1974 marriage tax penalty
art.

I would first mention that the marriage penalty we were looking
in those days was only $2 billion. It is now estimated to be over five
nes that amount. It is hard to project exactly where the increase
s come. Inflation accounts for some of it I am sure, the rising num-
r of two-earner families accounts for some of it, and also the in-
ease in the wages of most women are now up to 62 percent. As
omen's wages increase so will the marriage penalty.

This chart shows who actually pays. This is not a projection; this
from the statistics of income gathered by the Internal Revenue
rvice. You will notice there are charts on total returns and then on
vings and losses.

And you will see predominantly the people who lose are in the
ver income levels. You are more likely to lose because you are a two-
rner married couple if your salary is below $50,000 and you are more
ely to gain by virtue of the joint return if your salary is over
),000.

The marriage penalty has commonly been considered a two-lawyer-
nily problem. And I think that what the IRS statistics show is that
leed it is a blue-collar-family problem more so than a two-lawyer
oblem. Of course, a two-lawyer family will always pay more dollars
ause their income is higher but on the other hand, they are more
ely to benefit.

ndeed, three-quarters of all two-earner couples with less than
),000 will be penalized. And the lower your income, the more likely
are to pay a marriage penalty by virtue of having two earners in
family. In total amount you will see that two-thirds of the $2 bil-
marriage penalty was paid by people with incomes under $20,000.

So that while the dollars per couple might be greater for the
lthier or the higher income family, the other statistics point to the
t that the brunt of the burden is being borne by low- and middle-
ome families.

Well, that is the question of who pays. And the next issue is how much they pay. You will see on the facing page there is a chart which is in the form of a bargraph which shows how much that marriage penalty increases the taxes paid by any given family. These unfortunately were computed before the 1979 tax rates so I did not have time to update it.

Mr. CONABLE. Is this based on 1974?

Ms. SANCHEZ. No, this is based on 1978 tax rates. But I started with a family with a combined joint income of $8,000. If I start with a family of $7,000 they would be off the page because——

The CHAIRMAN. Are you also assuming an equal income by both earners?

Ms. SANCHEZ. Right; the worst case.

The CHAIRMAN. That is the worst case.

Ms. SANCHEZ. Right, the worst case at $7,000 produces an increase in tax of 300 percent, at $8,000 the 78 percent you see there is now 91 percent. And so what we have is a pattern of the penalty when stated as a percent of tax being greatest in the low-income families and gradually declining, actually very steeply declining and then gradually tapering off to the 12 or 14 percent that we see in the upper income ranges there.

The reason for all of this is that people are married, that is the reason they pay more tax. That is the only reason they pay more tax.

And the theory of why we tax married people is supposed to be that we believe that the family is the natural economic unit and, therefore, the natural tax unit. I believe this reflects a concept that families' well-being will perhaps be the best measure of their ability to pay.

And we have always adjusted our concepts of ability to pay by family responsibilities, giving personal exemption for children and a higher standard deduction or zero bracket amount or whatever.

But I should emphasize we do not tax families; we tax married couples. And the result of relying purely on marital status rather than on family responsibilities produces a tax burden which is perhaps inversely related to the ability to pay.

For example, if we compare a married couple with one earner with a $15,000 income to a head of household with a $15,000 income, we in both cases have a family with one worker and arguably one dependent and yet the head of household will pay 22 percent more on that $15,000 income simply because that person is not married.

Statistics indicate that the head of household is typically poorer, has a lower overall income level than married couples, is more likely to be supporting a minor rather than an adult who might contribute imputed income or other forms of wealth to the family. And while this person is clearly worse off than the married, one-earner couple, he pays more tax.

Even if we were to put aside the economic considerations, we are still looking at two family units which we distinguish between, inexplicably, purely on the basis of one being married and one not. So, we do not equate people who are equal and on the other hand, we equate all married couples as being equal. And that too, I believe, is faulty.

A married two-earner couple is in a radically different economic position than a married one-earner couple with the same income. The

arried two-earner couple has the loss of the imputed income of the
ousekeeper and the extra expense of earning the second income.

Statistics published by the Bureau of the Census indicate that the
onsumption expenditures for the two-earner couple which are related
the earning of the second income are on an average 23 percent higher
han those expenses for one-earner couples. In fact, this rate is even
igher in the lower income brackets, so that for people in the $8,000 to
10,000 bracket it is 36 percent.

So once again, we have the low-income family here paying more to
arn that second income and then paying a higher tax on it and are
ore likely to be penalized by the tax rates.

I think overall that the reliance purely upon marital status, there-
ore, ends up with a tax structure that imposes the lowest tax on the
ne-earner family and the highest tax on the two-earner family who
as a considerably lower ability to pay tax on the same level of income.

So we produce an inverse system to what I think we might have
tended to produce or at least think we produce by the reliance on
arriage solely as the determining factor.

I believe my time is up so I would turn to my colleague.

[Ms. Sanchez submitted the following:]

XCERPT FROM THE INTERIM REPORT TO THE PRESIDENT BY THE TASK FORCE ON SEX DISCRIMINATION, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE, OCTOBER 7, 1978

pdated and submitted by Samantha P. Sanchez, assistant professor of law,
Catholic University of America)

THE MARRIAGE TAX

troduction

The major source of sex discrimination in the tax code is not written out in so
any words but works indirectly through the "marriage tax" to sharply restrict
e economic inventives of women entering the labor force.

The source of the problem, in social rather than tax terms, is that the laws
e written with a vision of the stereotypical nonincome producing housewife
ho contributes to the family wealth through her home services. Her presence
ould reduce her husband's tax bill because, the theory goes, his income must
w support two rather than one. On the other hand, the tax code ignores the
lue of her work in the home on the ground that it is too indefinite. In sum, con-
ntional paternalism regards the homemaker as a burden and never as a bene-
. As a result, under the tax code, an unemployed wife has an effect similar
a tax loss. For having taken on this "burden," the husband will qualify for an
ditional $1,000 personal exemption, an additional $1,100 deduction (now called
e zero bracket amount), and for rates that are up to 20 percent lower, all in
l a massive reduction in taxes, cutting 30 percent off the tax bill on a $15,000
come. On the other hand, should the wife choose to enter the labor market, she
ll be faced with much higher tax rates than other workers since her lowest
te will, in effect, be her husband's highest rate. As Columbia Law professor
orge Cooper put it:

"Whether or not it was planned that way, the tax law tends to put women in
eir place in the home and keep them there." [1]

The source of the problem in tax terms is mainly the marriage penalty, which
a colloquialism for the combined effect of two provisions in the tax code that
eat married couples differently from single people. Briefly, they are the four
te schedules, and two zero bracket amount levels. As a result of these two
ovisions, the "nontraditional" couple, that is, one with two wage earners, pays
nsiderably more than they would each pay if they had remained single. In
ntrast, in the "traditional" (one earner) couple the wage earner pays less than

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[1] Cooper, "Working Wives and the Tax Law" 25 Rutgers Law Review 67 (1970).

a single person would. The disproportionately high tax imposed on each spouse, therefore, is clearly a result of the second income in the family, which is typically the woman's.

The problem is a relatively new one to our tax system, having been inadvertently created by rate schedule changes enacted in 1969, so it is not widely understood. Most people still believe that the rate structure works against single taxpayers, which to some extent it still does, but the issue is not so simple anymore. Prior to 1969, there were two easily identifiable sides to the controversy: single and married. The 1969 Tax Reform Act complicated this by creating a new rate schedule for singles which reduced but did not eliminate the discrimination and in the process, created a new level of discrimination by leaving two-earner couples with a higher rate. So, while married one-earner couples still pay less than singles, married two-earner couples now pay more than singles, making it clearly cheaper for many women to remain single or, if already married, to remain at home. The marriage penalty is substantial, amounting to between $5 and $9 billion in 1977 and affecting at least 19 million couples. And, with the dramatic increases in labor force participation by married women in recent years, the problem can only continue to grow. Only 29 percent of American families are the "traditional" type supported by the husband alone, while 47 percent are supported by both husband and wife.[2] Clearly, the label is now misleading as one-earner families are now in the minority. And increasingly, the "traditional" family is one in which both spouses work.

While the marriage penalty in the strict legal sense is paid by the couple, whether they file separately or jointly, it is in fact a function of the secondary income. And, though it is unfortunate, it is an unavoidable fact that women are the secondary workers in both social and economic terms. Last year full time women workers earned only 60 percent of the median salaries earned by men.[3] Working wives earn only 26 percent as much as their husbands do.[4] Women predominate in the lowest income category, comprising 63 percent of workers in the $3,000 to $5,000 income range, but only 5 percent of those making over $15,000.[5] A married woman's career is likely to be broken by time devoted to child raising. She will typically have less senority and job security than her male counterpart and is more likely to view her work as optional or the result of a temporary financial need, rather than as part of a long-term career goal. Men, on the other hand, are most likely to view their career as part of their identity and do not generally consider their work as optional; even when their wives earn a substantial salary, it is quite unlikely that they will choose to interrupt their careers to take care of the home and children. In fact, only 3 percent of all husband-wife families are supported solely by the wife.[6]

While the social and economic statistics point to women in general as bearing the marriage penalty, tax statistics suggest that it is low and middle income women who most frequently bear it, and that the lower the earnings, the more likely a woman worker is to be penalized. For example, 83 percent of all two-earner couples showing an aggregate adjusted gross income of under $10,000 pay a marriage penalty. In amount, 68 percent of the total marriage penalty was paid by two-earner couples earning less than $25,000 together, despite the fact that on an individual basis, the penalty increases with income, suggesting that the bulk of the penalty would be paid by high income couples. On the contrary, the statistics show that the marriage penalty is not just a problem for high income couples, such as those where both husband and wife are professionals but that a blue collar couple is more likely to pay a marriage penalty. The penalty, when stated as the percentage that a couple's tax will increase over the tax paid by two single people is highest in the low income groups, even though the actual dollars paid are fewer. Thus, in the most extreme examples, two $3,500 per year workers will pay 300 percent more tax when married than single, even though this amounts to only $168.[7] Two $4,000 per year workers pay 91 percent more, and the percentages tend to decrease as income increases. (see p. 25)

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[2] U.S. Dept. of Labor, Bureau of Labor Statistics, "U.S. Working Women: A Databook," (1977), calculated from Table 40, p. 37.

[3] Bureau of Labor Statistics, U.S. Dept. of Labor, News Release dated Mar. 27, 1980 (1979 Statistics).

[4] U.S. Dept. of Labor, Bureau of Labor Statistics, "U.S. Working Women: A Databook," (1977), Table 41, p. 38.

[5] National Commission of Working Women. "A Few Facts About Working Women."

[6] "Special Labor Force Reports-Summaries, Monthly Labor Review, April 1979, Bureau of Labor Statistics, U.S. Dept. of Labor.

[7] The penalty within any income group is highest where the income split is equal between the partners, as in this example.

A variety of solutions to the problem has been proposed over the years. The most direct and comprehensive proposal is simply to eliminate separate rates for different filing statutes and tax everyone at the same rate regardless of whether married or single. The burden of family responsibilities should be accounted for by credits or increased deductions if that is considered desirable. Of all of the possible solutions this has the overwhelming advantage of structural simplicity and equity. It avoids the problems the recent amendments to the tax structure have caused by helping one group while hurting another. And it brings the whole tax rate structure back into harmony with one of the most fundamental principles of the income tax system, that of basing the tax on income rather than on who spends it.

INCOME SPLITTING

The essence of the marriage penalty is that tax is linked to marital status, a concept which entered our tax system not by design or conscious policy choice, but as a makeshift response to the practice known as "income splitting." The Revenue Act of 1913 imposed a single progressive rate on every individual regardless of marital status or family responsibilities. The rates were low, but since they increased with income, it became immediately apparent to high income individuals that devising a way to shift part of their income to another member of the family would, in effect, permit them to start at the bottom of the tax ladder twice. The total tax bill by the family would be less as a result of avoiding the upper part of the rate schedule. Many income splitting devices were tried and rejected by the courts. Passive income derived from investments could be shifted easily enough by transferring title of the underlying asset to another family member or to a trust, but even these plans came under strict scutiny. In *Helvering* v. *Horst*, 311 U.S. 112 (1940), for example, the father was held taxable on the income on a bond, even though he had validly transferred the coupons to his son, because he had retained title to the bond itself. The entire property, not just the right to the income, must be transferred.

Earned income was even more difficult to shift to other family members. In *Lucas* v. *Earl*, 281 U.S. 111 (1930), the Court rejected an attempt at income splitting through a contractual arrangement between a husband and wife which gave each the right to half of the other's income. Despite the validity of the contract and the fact that it was entered into more than a decade before the tax law was enacted, the Court interpreted the tax code to:

"Tax salaries to those who earned them and provide that the tax could not be escaped by anticipatory arrangements and contracts however skillfully devised to prevent the salary when paid from vesting even for a second in the man who earned it." 281 U.S. at 114–15.

The one major exception to the widely accepted doctrine of *Lucas* v. *Earl*, supra, was affirmed later that year by the Supreme Court in *Poe* v. *Seaborn*, 282 U.S. 101 (1930), which approved of income splitting for married couples in community property states. The distinction lay in statutory interpretation:

"The case requires us to construe Sections 210(a) and 211(a) of the Revenue Act of 1926 (U.S.C. App., Tit. 26, §§ 951 and 952), and apply them, as construed, to the interests of husband and wife in community property under the law of Washington. These sections lay a tax upon the net income of every individual. The Act goes no farther, and furnishes no other standard or definition of what constitutes an individual's income. The use of the word "of" denotes ownership. It would be a strained construction, which, in the absence of further definition by Congress, should impute a broader significance to the phrase.

"The Commissioner concedes that the answer to the question involved in the cause must be found in the provisions of the law of the State, as to a wife's ownership of or interest in community property." 282 U.S. at 109–110. (Footnotes omitted.)

The Court then determined that the community property law of Washington did create sufficient indices of ownership in the wife to consider half of his earnings as her income. This qualified her to file a return reporting half her husband's income as hers. Unfortunately, the decision has been thought by some non-legal commentators to mean that income splitting is required by the United States Constitution, even though the opinion clearly rests on the interpretation of the statute and does not discuss constitutionality at all. The Court simply applied a common rule of construction by referring to state law for a definition of income which was not supplied by the federal statute. *Poe*, was distinguished from *Lucas* v. *Earl* because in *Lucas*, the assignment had been by contract rather than state law. Ironically, Mrs. Earl had more rights in her husbands' income and assets through their contract than Mrs. Seaborn had under the community property law.

The Supreme Court has never directly considered whether Congress could Constitutionally define "income" differently than state law in community property states, but it has upheld a provision which does so in the estate tax. In *Fernandez* v. *Wiener*, 326 U.S. 340 (1945) the Court upheld a section of the estate tax law which looks behind the community ownership of property to determine which of the marital partners actually contributed the money to the asset and should be taxed on it, regardless of title. However, a 1931 Supreme Court decision has been thought by some to cast a faint shadow of doubt over the constitutionality issue. In *Hoeper* v. *Tax Commission of Wisconsin*, 284 U.S. 206 (1931) the Court held a Wisconsin tax statute unconstitutional because it mandated that all income of all family members be added together and a progressive tax was imposed on the total. Alternately, a husband and wife could file separately only by aggregating their income and paying on the average taxable income. The Court held that:

"Any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the Fourteenth Amendment. That which is not in fact the taxpayer's income cannot be made such by calling it income." 284 U.S. at 215.

The issue, however, in *Hoeper* is not the definition of income but the unreasonableness of taxing one person's income by reference to that of another. In fact, it has been argued that *Hoeper* requires, rather than prohibits, strict individual taxation since the present federal system imposes tax with reference to the income of another in the joint return. This contention has recently been rejected by the Court of Claims in *Mapes* v. *United States*, (No. 403–77, 5/17/78) which is now being appealed. (cert. denied—Sup. Ct.)

Community property laws are specifically disregarded in several sections of the internal revenue code, (see sections 219(c)(2), 402(e)(4)(G), 911(c)(3) and 408(g)). In fact, the practice of disregarding legal title under state law (both common law and community property states) for purposes of taxation is not an uncommon one. Provisions which include completed gifts or legal transfers in the estate of the transferor are often used to prevent the avoidance of estate taxes, (see for example, IRC § § 2035, 2036, 2037, 2038, 2040, 2042) despite the lack of legal title. In fact, § 2040 expressly ignores joint title to property in which the decedent had a partial interest and requires proof of actual monetary contribution to the purchase of the property by the surviving cotenant before allowing the exclusion of any portion of the property. The corporate tax similarly looks behind the legalities to determine the bona fides of a transaction and will attribute to the taxpayer the ownership of stock in the same corporation by an close relatives for purposes of meeting certain qualifications, (see IRC § 318).

The practical result of the *Poe* and *Lucas* decisions was to create a geographical disparity between the taxes paid by married couples in the community property states and those in the common law states. The inequality did not become much of a national issue, however, until the tax rates were drastically increased during the early 1940's to pay for World War II. Several state legislatures reacted by passing community property laws in their states in order to obtain the advantages of income splitting for their citizens. The vast disruption of property and inheritance laws which resulted from such changes prompted the Congress in 1948 to change the federal tax law to remedy the geographical inequality. The solution chosen was to extend income splitting to all married couples regardless of their state of residence. Legislative repeal of the *Poe* v. *Seaborn* decision, i.e., taxing all income to the earner under *Lucas* v. *Earl* was considered, as were several other solutions, but these were rejected as unfeasible or impractical. Income splitting was chosen at least in part because it resulted in tax reductions rather than the tax increases required by the other solutions, and was, therefore, more popular politically especially in an election year. Of course, unlike community property states, the tax code gives no legal rights to half of a spouse's income, so the tax law, in essence, creates a myth of two earners within the marital unit.

Unfortunately, the problem at the time presented itself rather simplistically as a disparity in the tax treatment of families with the same income living in ferent states, and the Congressional action responded only to that aspect of the oblem. In fact, single taxpayers were also disadvantaged by the *Poe* decision, gardless of where they lived. Community property married couples had gained considerable advantage over all other taxpayers, not just the married ones who d the misfortune to live across the state line. The 1948 tax act, therefore, lified this problem and started 20 years of lobbying and lawsuits by single tax- yers to put the system back in balance.

The ability to split income resulted in a difference of up to 40 percent between e rates imposed on a single wage earner and a married one with the same in- me. Many policymakers and courts could justify this by pointing to the heavier rden that the married man's income must bear in supporting a wife.[8] Yet there as a class of taxpayers who did not fit conveniently into either single or married tegories: heads of households who were supporting dependents but were not arried. Up to then the added burden of caring for dependents had been ac- mmodated by additional dependency exemptions, but the creation of a new rm of tax reduction for the married couple led those single people who cared r children or dependents to demand the same benefits. In 1951, a new rate hedule was enacted for heads of households which fell in between the rates on arried and on singles.

In 1954, Congressional concern for the hardships of recently widowed heads of usehold prompted yet another amendment allowing the surviving spouse to ntinue to use the lower rates for married couples in the year of death and for o full years thereafter. The single taxpayer lobbies renewed their efforts and ally, in 1969, Congress responded by reducing the tax rates on single taxpayers that the maximum differential between single and married is 20 percent. The arriage tax is a result of this new rate schedule.

The one group left behind in all these tax reductions was two-earner couples. ey do not benefit from the myth of income splitting, (unless one spouse earns s than 20 percent of the total) because their total income is actually split be- een two earners. Two-earner couples also do not benefit from the head of house- ld rates or the single rates because they are married, so they are left the choice filing jointly or using the "married filing separately" rate, which is the old gle filing rate. The result of all this piecemeal legislation is four rate schedules, through D, and a wage earner with $15,000 of adjusted gross income will pay:

(1) $1640 married filing jointly,
(2) $2002 as a head of household,
(3) $2352 filing singly, or
(4) $2805 married filing separately.

TAX POLICY CONSIDERATIONS

The family-to-family comparisons of tax burdens in different states that ompted this legislative activity finally created a new tax policy goal—that milies with the same dollar income should pay the same tax—which has since ecome a common phrase in the language of tax policy. There is, however, no mutable principle of tax law or economic theory that dictates any one tax unit efinition must be chosen over another. The decision was simply a matter of litical choice in 1948. For the first 30 years of our tax system, the individual as the chosen tax unit and for the last 30 years it has been a combination of the dividual and the marital unit. The complexity of the present system and the in- quities and constant imbalance it causes argue strongly for a reconsideration of d return to the original system.

Every discussion of the policy considerations involved in choosing the appro- iate tax unit starts by quoting the four widely accepted tenets of tax policy hich must be considered:

1. The income tax rates are progressive, so that a single person earning $10,000 ill pay more than two earning $5,000 each.

2. Families should pay the same tax as other families with the same income.

3. There should be no penalty for being married, so two people who marry hould not pay a higher tax afterward than they did when single.

4. There should be no penalty for remaining single, so a single person earn- g $10,000 should not pay lower taxes as a result of marrying a person with o income.

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[8] *Vivien Kellems v. Commissioner of Internal Revenue*, 58 T.C. 556 (1972) aff'd 474 2d 1399 (2d Cir. 1973).

Obviously, the present system violates several of these tenets because the principles themselves are incompatible. The key to the conflict is that the taxpayer unit is differently defined in paragraph No. 2. As a result, no system can possibly accommodate all of the four principles.

The present system now accepts as gospel the second principle stated above—that families with the same income should pay the same tax—and so must violate the third and fourth principles so that there are penalties associated with being single and with being married. Furthermore, the first principle of progressivity is unevenly applied because of the multiplicity of rate schedules.

The most common justification for choosing the married couple as a tax unit is that families are an indivisible economic unit, spending their pooled income for collective purposes. This approach assumes that the spending or consumption unit rather than the earner is the appropriate tax unit.

One of the most authoritative voices for the consumption unit approach is the Canadian Carter Commission Report[9] which recommended adoption of the family as the tax unit rather than the individual. However, even the Carter Commission recognized that such a system of income aggregation would be unfair to working wives and recommended a tax credit to offset the disincentive of such a system.

There are many considerations which argue against the consumption unit theory as a justification for treating the married couple as the tax unit.

First, it should be noted that our system doesn't tax families (the spending unit); it taxes married couples. Any other household members with sufficient income to file are treated as unrelated single individuals regardless of their contribution to the family unit or the benefits received from it. If our system were based on economic units, then other related (or perhaps even unrelated) members of the household who share in the earning and consumption of common food and shelter should all be included. The distinction is not insignificant as recent Dept. of Labor statistics show that 16 percent of all families with earnings receive income from family members other than the husband and wife.[10] Presently, other family members are considered such for tax purposes only if they are counted as dependents. The choice of the marital unit, therefore, is not really consistent with the consumption unit explanation.

The second point is that spending patterns are usually irrelevant in a tax system structured on income as ours now is. (There are elements of a consumption based system in our present tax law, such as the taxation of certain pensions, but they are not relevant here.) Through case law and code, it is generally clear that our tax system is primarily based on income and that income is taxed in the hands of the one earning it and not those who may benefit from it, possess some degree of control over it, or, in some circumstances, even have complete legal title to it. The doctrine developed in *Lucas* v. *Earl*, supra, still prevents the shifting of income away from the earner for tax purposes.

The partial incorporation of an expenditure or consumption concept into what is fundamentally an earner based tax system contributes to the conflict we now have. If, in the list of principles above, all of the goals were based on equality between the earners of income, and not the consumers of it, there would be no conflict in achieving horizontal equity. The difference would occur in taxing the two-earner family without reference to the taxes paid by a one-earner family on the same income, violating only the second principle.

Perhaps choosing the family or married couple as the tax unit of the present Code reflects the belief that, as it is a natural economic unit, the total of the couple's income is the best measurement of their ability to pay tax. Indeed, our tax system has always recognized that increased family responsibilities should reduce a wage earner's tax bill by allowing the deduction of personal and dependency exemptions in arriving at taxable income. In addition, the larger zero bracket amount for married couples is another method of adjusting income for family obligations by allowing for a higher floor of untaxed income. Unfortunately, the application of four different rate schedules complicates this immensely and in fact completely destroys the "ability to pay" rationale, imposing the heaviest burdens on those with the least economic ability.

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[9] Report of the Royal Commission on Taxation (Canada 1966).

[10] Bureau of Labor Statistics News, U.S. Department of Labor, Mar. 27, 1980 (1979 statistics).

For example, as we have already mentioned, a wage earner with $15,000 of ncome will pay: $1,635 if married to a nonearner or $1,996 if a head of household. In both cases, the taxpayer is supporting a non-earning dependent yet heir tax burdens inexplicable differ.[11] Ironically the only major economic difference between them is that the married taxpayer is most likely to benefit from he imputed income of the homemaker while the head of household is not. This s so because heads of households are more likely than even husband-wife amilies to have children under 18.[12] Clearly a dependent under the age of 18 s likely to contribute little if anything to the dollar income or imputed income f the family. In simple terms of ability to pay, the head of household should ave the lighter rather than the heavier tax burden. Recent statistics published y the U.S. Department of Labor[13] describing the economic status of the head f household clearly reinforce this.

These data show that 84 percent of single headed households are headed by omen whose average salaries are only 54 percent of those of their male counterarts. But in comparison to husband-wife families they earn only 44 percent as much, on the average, and the gap has actually increased from 48 percent in 970. "The gap was even wider when children under 18 were in the home. The 977 median income for families headed by women with children ($6,502) was nly 35 percent that of husband-wife families with children ($18,756)."[14] In 1977, ne out of three female-headed households lived below the official poverty level.

The typical head of household, then, is poor, female and likely to be supporting minor children. The married worker is typically supporting an adult homemaker, and yet our tax system imposes a burden 22 percent higher on that 15,000 per year head of household than on the married worker.

Even if we ignore the refinements of economic analysis, it must still be admitted that we are distinguishing between two taxpayers with equally burdensome family responsibilities. A tax system which really held fast to the principle of taxing equally families with equal incomes would not tolerate such a distinction, but our oversimplified reliance on marital status to determine tax ates does exactly that. Conversely, not all married couples with the same income ave the same ability to pay and yet our tax structure presumes that they do.

For example, there are many distinctions between the one and two-earner families that would justify different tax treatment. Once again the one-earner family has the considerable advantage of the imputed income of the housewife, and must incur only one set of employment related expenses (wardrobe, lunch, transportation) since there is only one job (see pages 31 and 32 of this report). Further, they pay Social Security payroll taxes on only one income base, so the one-earner family will pay a maximum of $1,403, where the two-earner family may be liable for up to twice that amount. The only economic advantage which the two-earner couple retains from their martial status is the ability to share the cost of food and shelter, but a large number of single taxpayers now share shelter with another taxpayer. In terms of income and expenses, therefore, the two-earner couple is more appropriately compared with two single people and should be taxed more lightly than with a married one-earner couple with the same income.

In conclusion, our choice of the family, "the natural economic unit" as our tax unit is embodied in a series of rate schedules based solely on marital status and produces tax burdens which are, in fact, inversely related to the ability to pay. Another justification offered for aggregation and income splitting treatment of marital income is that it recognizes the contribution of the wife to the family resources through her housework. In fact, however, it ignores the value of that contribution, since, if it were recognized as income, it would be taxed. It may appear to recognize the concept that husband and wife are equal partners in an economic unit by imputing half of his income to her for income tax purposes. However, as previously noted, this imputation of income hardly benefits the wife, since it gives her no title or other legal claims on the money. And, the tax system itself recognizes the illusory nature of the income which is imputed to the wife: at the death of the earner husband, all proceeds of that income are included in his estate for tax purposes. The wife, supposedly a co-earner for income tax purposes, receives no credit for having contributed to the purchase of assets with "their" joint income.

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[11] The married tax payer always has a lighter tax burden than the head of household with the same number of dependents regardless of how many dependents are involved.

[12] "Women Who Head Families," Monthly Labor Review, February 1978, U.S. Department of Labor, Bureau of Labor Statistics.

[13] Special Labor Force Reports-Summaries," Monthly Labor Review, April 1979.

[14] "Special Labor Force Reports" supra, at p. 51.

The experience of other countries in structuring tax systems is interesting. Despite the strong recommendation that Canada adopt a system of aggregation of the family's income, the proposal has not been adopted.[15] The Minister of Finance, in his "White Paper on Tax Reform" [16] published three years after the Royal Commission Report, dismissed the proposal as a "tax on marriage." Sweden switched from an aggregation system to an individual taxation system in 1965, after acknowledging the sexist nature of the former system.[17] In her country-by-country analysis, Professor Blumberg states:

"Aggregation is not a universally accepted principle of income taxation, and even though it is employed by most nations, the disincentive feature is generally offset by incentive provisions such as earned income exemptions for all earners, additional exemptions for working wives, further exemptions for working wives with young children, and housekeeper and child care deductions." (footnotes omitted)[18]

And, Sydney Key in arguing for individual taxation states:

"Since the United States has been in the forefront in so many areas of equal rights for women, it is perhaps surprising that, compared with other industrial countries, it is almost alone in adhering to the principle of taxation that only the total income, and not who earns it, matters. A recent Organization for Economic Cooperation and Development survey of 17 industrial countries found that in all but the United States a two-earner couple with the husband and wife each earning the average national wage are taxed less heavily than a one-earner couple with the same total income. In the United States, the tax would be the same." [19]

THE MARRIAGE PENALTY

The rate schedules are not the only source of the marriage penalty. The standard deduction (now the zero bracket amount) for married couples filing jointly is $3,400 ($1,700 if filing separately) but $2,300 for each single person. Therefore, two wage earners lose $1,200 in deductions when they marry, unless they itemize. This incentive to itemize runs directly counter to the efforts to encourage greater reliance on the standard deduction as the most effective tax simplification measure. In addition to the added complexity, the statistics of income indicate that the standard deduction policy is not income neutral, since itemizers tend to be in the upper income brackets. In 1974, 79.3 percent of the joint returns taking the standard deduction showed an adjusted gross income of under $15,000, while almost 60 percent of the itemizers earned more than $15,000. This means that the lower standard deduction has greater impact on low and middle income groups, while upper income taxpayers can avoid the problem by itemizing.

These two factors are not of equal importance in computing the total marriage penalty, and the impact may vary with income level. However, the following figures computed by economist Dr. Sidney Key show the components of the penalty paid by a couple with adjusted gross income of $15,000 each as a result of being married. Of the total penalty of $1,019, $180 is attributable to the loss of the extra general tax credit.[20] The standard deduction penalty accounts for $348. The largest component of the marriage tax, $407 derives from the higher rate schedules. The remaining $84 is accounted for by the effect of the standard deduction penalty at the higher married tax rate.

Another factor affecting the penalty is the ratio of the earnings of the two workers. A $20,000 couple who each earn $10,000 will pay a higher penalty than a couple with the same income but a 70–30 income split. The more equal the income, the higher the penalty, because the couple derives progressively less advantage from the myth of income splitting as they approach actual equal income levels. At the other end of the scale, however, as the incomes become more disparate, the penalty can turn into an advantage. Generally, when the income ratio is about 80–20, the savings to the higher earning spouse more than offset the penalty to the lesser earning spouse and the total tax bill is lower. This "breakdown ratio" also varies with the total income level. In 1974, the most recent year for which the statistics are available, about 29 percent of the two-earner married couples saved taxes as a result of being married. The attached chart shows the savings and losses resulting from joint filing for each income group, using 1974 figures.

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[15] Blumberg, Sexism in the Code: "A Comparative Study of Income Taxation of Working Wives and Mothers." 21 Buffalo Law Review 29, 81 (1977).

[16] CCH Can. Tax Report, No. 1220 (1969).

[17] *Blumberg*, at 53 n. 23.

[18] *Blumberg*, supra at 53–54.

[19] Key, "Lets Stop the Tax on Marriage." The Washington Post Jan. 29, 1978, P.C. 8 at col. 1.

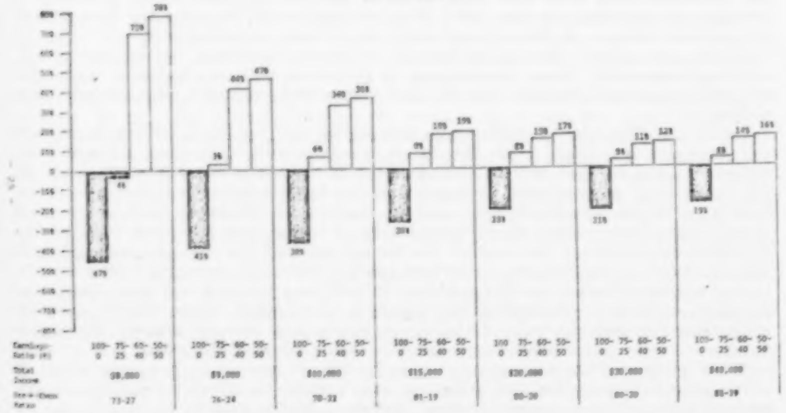
[20] Computed prior to the repeal of general tax credit.

IMPACT ON THE WORKING WIFE

These statistics illustrate what 19 million couples have already discovered: that it is cheaper to stay single if both partners work. This has been labelled as an anti-family provision, or an encouragement to sin, and the standard deduction for singles was recently reduced to make sin somewhat less advantageous. The primary concern of the Task Force, however, is the impact on women already married who must choose between their tax-exempt unpaid work in the home and the high price to be paid for the economic independence of their own work. Few of the studies on the economic problems of women have focused on the singularly high tax rates which our system imposes on the secondary worker in a two-earner family.

Numbers might serve to illustrate the point. A married couple with one $15,000 per year income pays a tax of $1,635. Should the wife in that couple choose to seek market work at a salary of $15,000, their taxes will increase to $5,593. A 100 percent increase in income thus increases the couple's tax bill by 342 percent. Viewed from the wife's position, her salary will bear a tax of $3,958, 142 percent more than the $1635 tax her husband paid last year on the same income.[21] The tax is so much greater on her income for several reasons: first, the rates are progressive, so when income is aggregated, the last dollars added are subject to a higher rate, and, second, all of her income is taxed since there are no additional offsetting deductions or exemptions.

CHART A. MARRIAGE PENALTY AS A PERCENT OF TAX INCREASE OF BEING MARRIED OVER BEING SINGLE



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[21] As discussed earlier, the disparity increases as their incomes more nearly equal.

1974 MARRIAGE TAX PENALTIES—2-EARNER COUPLES FILING JOINT RETURNS

[Dollar amounts in thousands]

	Total returns	Savings			Losses		
		Returns	Percent of total	Amount	Returns	Percent of total	Amount
Adjusted gross income:							
1 to under 3	3, 226	0	0	0	3, 226	100.0	$45
3 to under 5	313, 812	19, 296	6.0	$113	294, 516	94.0	17, 591
5 to under 7	781, 820	90, 212	12.0	1, 970	691, 608	88.0	72, 949
7 to under 10	2, 064, 917	434, 799	21.0	16, 866	1, 630, 118	79.0	209, 484
10 to under 15	5, 078, 432	1, 377, 712	27.0	112, 838	3, 700, 720	73.0	349, 796
15 to under 20	4, 979, 569	1, 662, 155	33.0	168, 888	3, 317, 414	67.0	367, 465
20 to under 25	2, 813, 458	959, 703	34.0	161, 070	1, 853, 755	66.0	302, 865
25 to under 50	2, 046, 993	690, 495	34.0	277, 899	1, 356, 498	66.0	483, 280
50 to under 100	136, 273	68, 264	50.1	124, 553	68, 009	49.9	106, 326
100 to under 200	20, 934	14, 162	68.0	64, 376	6, 772	32.0	19, 457
200 to under 500	3, 470	2, 072	60.0	13, 337	1, 398	40.0	4, 648
500 to under 1,000	323	132	41.0	857	191	59.0	745
1,000 plus	120	41	34.0	358	79	66.0	340
Total	18, 243, 347	5, 319, 043	....	943, 125	12, 924, 304	....	1, 934, 991

Source: Statistics compiled by Sailer, P., Internal Revenue Service from the Statistics of Income, 1974, Department of the Treasury, Internal Revenue Service, for use in preparing study "Using Tax Returns to Study Wage and Taxpaying Patterns by Sex, 1969 and 1974", The American Statistical Association: Proceedings of the Social Statistics Section, 1976.

Progressivity is a clearly intended result of our rate schedules, but the rates of increase vary, once again depending on marital status. A similar increase (from $15,000 to $30,000) in the income of a single taxpayer would result in a 320 percent increase in tax, or a 329 percent increase if the taxpayer were a head of household. The rate of progressivity, 342 percent, imposed on the wife's income in our example is, therefore, the steepest increase in the tax code at that income level. The increase is even steeper at the lower income levels, which is more typical of women's salary ranges. For example, a $10,000 wage earner, married to anothr $10,000 worker will have a 389 percent increase in tax, compared to 359 percent for the same salary increase for a head of household and 324 percent for a single taxpayer.

While some argue that the increase in tax is really a penalty that both pay, not just the wife, it is also true that the penalty is a decisional disincentive peculiar to secondary income jobs. Few couples would consider the first income as optional, since it is likely to be their only source of sustenance.

For many couples, the second income is also not optional, but is required by economic necessity. These couples are in the lower income groups on whom the marriage penalty falls most heavily, and they are the families who are least able to bear it.

Other families may consider the second income optional. If the husband's earnings are very high, a job for the wife may even be a luxury, since she can afford to work for her own fulfillment, even if the job is not financially rewarding because of work-related expenses and the tax consequences. For most families, however, a second income may be considered desirable because it could significantly improve the family's standard of living, and for these families the net difference between the cost of the second job and the income produced by it may well be the deciding factor. There are no clear data pointing to the motivational impact of taxes in this context. It has been pointed out that articles in women's magazines discussing the question of whether wives should work include detailed calculations of the extra taxes and the net return. There are studies, of very questionable authority, on both sides of the issue.

While it is unlikely that the tax penalty has no impact on behavior at all, it must be remembered that the decisions which might be affected—taking a job or getting married—are major personal decisions which usually involve a complicated matrix of individual considerations. These are not the simple economic decisions usually influenced by tax incentive provisions, such as whether to insulate the attic or whether to buy another typewriter for the office. It is likely that tax considerations are not very important in deciding to get married. In fact, many people don't even know in advance that there is such a penalty. However, even if they do know and still consciously decide to marry and pay the penalty, that doesn't make the imposition of that penalty right. It merely makes it collectible.

In this context, perhaps the effect of marriage penalty on working wives should be more broadly defined than the simple numbers given in the charts, for the woman entering the labor market will face numerous other economic disincentives as a result of taxes, some of which are not so easily calculated.

1. *Social security.*—Payroll taxes for contributions to Social Security are collected only on the first $22,900 of income. The principle of aggregation of income which works to the wife's disadvantage in the personal income tax should actually help the secondary earner since, to the extent her wages put the total family income over the wage base, they would not be taxed. However, aggregation does not apply to the payroll tax and each earner is liable for the entire maximum. Unfortunately, since the subsequent benefits are frequently based on the husband's earnings rather than the wife's, this particular tax payment frequently provides the wife no individual benefits. The inequitable treatment of women in the Social Security System has been thoroughly analyzed in another report by this Task Force, and will not be treated further here. However, as an element of the tax considerations facing a working wife, the payroll tax cannot be ignored. The woman earning $15,000 per year will pay $919.50[22] in addition to the $3,958 federal income tax already computed.

2. *State and local income taxes.*—The pattern of state and local income taxes is too diverse to be fully described here. Some use the same aggregated base that the federal tax uses and some use an individual base. In fact, several states do not use income taxes at all. The burden differs greatly from state to state, but as a national average, state taxes are about 16.3 percent of the federal levy.[23] If, therefore, our $15,000 per year wife pays state taxes at this "average" rate, her additional taxes would be $645.15. This is the most hypothetical of the figures, because of the wide variance between states, but is still a factor to be considered.

3. *Imputed income of housework.*—Generally, non-monetary, or imputed, income is simply not considered in our tax system for several important reasons: it is very difficult to value and the recipient does not usually realize any cash or severable profit with which to pay any tax. While imputed income, of course, appears in many forms, such as the farm owner consuming home grown produce or the electrician who is doing his or her own wiring, and so forth, it is generally accepted that the single largest form of imputed income in our economy is the housework performed by women.

A woman can be employed in the home working full time for her family, but because the work is not recognized by the tax system, the resulting "income" is in effect tax exempt. Therefore, in a sense, homemaking is subsidized. Despite its tax treatment, however, housework is a job. People can be hired, in the conventional salaried sense of the word, to perform the work. The housewife herself could agree to do the same chores for another family and receive taxable income. In fact, the example frequently used to illustrate this point is that of Mrs. A and B, who agree to do each other's housework in exchange for a salary of X dollars. Each will be taxable on the X dollars. In fact, even if they do not exchange dollars but merely barter services for services, they are each taxable on the fair market value of the services received. The point is that there is a labor market equivalent for the work performed, so it is not the work itself that is untaxed. It is only when that work is performed for one's own family and is, therefore, unpaid that it is tax exempt.

The 1975 Social Security Administration Study states an average market-replacement value of $4,705 per year at 1972 wage levels for the value of housewife services. While economists, personal injury attorneys, and statisticians might not agree on how to arrive at such a figure, the differences are not important to this analysis. It is used here only to illustrate the point that a woman in the home produces a substantial untaxed income whereas anything else she does will bear a tax. If she does choose the labor force there is no offsetting deduction from her taxable income for the cost of replacing her services in the home, so there is an immediate tax impact. Thus, even if the tax system were in every other way neutral toward the working wife, a considerable disincentive would face her outside her own front door. In fact, economists have argued that this single facet of our tax system poses such a substantial inhibition that the tax structure should be changed to neutralize the choice between home and market work by exempting some base amount of the working wife's income.[24]

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[22] This figure does not include the amount paid by the employer on her account.

[23] "Significant Figures of Fiscal Federalism (1976–77)" vol. 2, Revenue and Debt, Advisory Commission of Intergovernmental Relations, Washington, D.C.

The Task Force is concerned primarily with the tax penalties that a working wife actually pays because of her marital status rather than the loss of imputed income, but it is important to realize that in addition to the higher taxes she is also losing the tax exemption she had as a housewife.

4. *Costs associated with work.*—Another consideration facing the working wife is that the cost of replacing her services in the home are not generally deductible. A major exception to this was recently enacted [25] in the dependent care credit which allows a reduction of taxes of up to $400 for those expenses. However, the replacement of household services which are not solely for the benefit of a dependent (e.g., cooking, cleaning, etc., for a couple without dependents) or which exceed the credit limit are not deductible. Furthermore, the expenses which any worker incurs in earning a salary, such as wardrobe, lunches and transportation, are of course, not deductible.

Statistical evidence of consumer expenditures gathered by the Bureau of Labor Statistics in 1972–73 indicates that two-earner families spend an average of 23 percent more on work related expenses than one-earner families.[26] The study selected six consumer expenditures "generally perceived to be the ones influenced more by earner status of the wife than by other demographic characteristics. These are food away from home, female clothing, domestic and household services, and expenses related to the automobile-car purchase, gasoline and other vehicle costs." [27] In low income families ($4,000–$6,000) the extra expenses are 36 percent higher than those of a one-earner family with the same income, while higher income families (over $20,000 per year) showed almost no difference (less than 5 percent). In between these two extremes, two-earner families had consistently higher work-related expenses ranging from 15 percent to 25 percent more than one-earner families. Fully 60 percent of the extra expense relates to transportation costs, which have experienced a more rapid inflation than other expenses or than wages have experienced in the 8 years since the consumer survey was done, so it is likely that the margin of extra expense is even wider in 1980.

Although these personal expenses should not necessarily be made deductible, they are important considerations to the wife in making a choice between market and non-market work, and cannot be ignored. Furthermore, the fact that virtually every wage earner incurs these expenses to some degree, individually, regardless of marital status illustrates the inappropriateness of our system of aggregating income and expenses of those who are married. Many of the most basic expenses (so universal that the tax code disallows their deduction) have absolutely nothing to do with marital status. In this regard, the married couple with two workers should more appropriately be compared with two single workers.

CONCLUSION

In summary, the factors which contribute to the disincentive facing a working wife are many: substantially higher federal income taxes, state income taxes, payroll taxes, loss of imputed income and non-deductible work related expenses. The actual impact this has in keeping women out of the labor force and maintaining their status as economic dependents is not clear. Of course, the lack of a proven motivation impact does not justify the discrimination.

The problems which the tax code poses for the working wife stem primarily from taxing her status rather than her income. Along with the higher tax resulting from aggregating income for both spouses and the complications arising from the use of four rate schedules, there are other disadvantages that joint filing status poses. The most substantial are the standard deduction differential and the higher rates for married people filing separately which give greater benefit to single individuals than to married.

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[24] See, for example, Vickrey, W., "Agenda for Progressive Taxation," 1947, at p. 44.

[25] IRC § 44A, enacted in 1976.

[26] "Working Wives and Family Expenditures," Waldman, Elizabeth and Jacobs, Eva E., Bureau of Labor Statistics, American Statistical Association, 1978, Proceedings of the Social Statistics Section, pp. 41–49.

[27] Id., at p. 42.

PROPOSALS

1. A return to individual taxation, the pre-1948 system, for all taxpayers regardless of the state of their residence, eliminates these distinctions by removing marital status as a criterion of tax. This would also solve the problems complained of by single taxpayers and heads of households who, despite their legislative compromises, still pay more than the married one-earner couple. Individual taxation avoids the seesaw effect which has been the unfortunate result of the piecemeal legislative approach taken in the past.

Advantages

This approach would vastly simplify the current system by taxing all individuals with income at one uniform rate.

It would eliminate the marriage penalty as well as the singles penalty, removing the most substantial part of the tax disincentive now facing wives who wish to work.

It removes other possible problems arising from the marital status distinction, such as the many deductions that are halved for married taxpayers filing separately.

Disadvantages

The single largest disadvantage is the loss of revenue which results from the tax reduction this would give the majority of taxpayers. Of course, there is no substantive reason that the one rate schedule chosen must be the lowest now in the code. Obviously, any rate schedule can be chosen or a new one devised to fit the revenue, but that would require the Congress to vote a tax increase for those now paying the least: the "traditional" one-earner couple.

One criticism aimed at individual taxation is that it will only encourage wealthy people to avoid taxes by artificially transferring income producing assets to their spouses. This may, of course, be true, but the Task Force does not consider it an undesirable result. The current system already gives wealthy people the advantage of fictional income splitting without requiring that legal rights to the income actually be shared. To the extent that individual taxation might encourage a more equal splitting of marital assets, it would contribute to greater economic security for women. Furthermore, the transfer of title will likely require gift tax treatment which would, if anything, increase the taxes now paid in relation to those assets.

It should be noted that transferring assets to other family members to split taxable income is now done between parents and children and is not regarded as a tax avoidance problem. In fact, there are an elaborate series of code provisions designed to facilitate these transfers through family trusts. (See 26 U.S.C. 641 et seq).

Another criticism aimed at individual taxation is the problem of dividing family income and deductions between the spouses. Income and deductions relating to jointly owned property can be divided according to the share of ownership, just as is now done for joint owners who are not married. A presumption that the property is owned in equal shares, subject to proof by the taxpayer of a different scheme, would facilitate the administration of such deductions.

Deductions for some personal expenses, such as medical expenses, can be allocated to the person incurring them. However, those personal family expenses which are not easily allocated, such as moving expenses, dependents medical expenses and personal dependency exemptions, would have to be divided between the spouses in some fashion. These deductions could be allocated according to the ratio of earnings on the theory each spouse has contributed a pro rata share of the cost according to his or her means. Alternatively, they could simply be divided equally which is now done for some deductions for allocating allowable amounts between spouses filing separately (see, e.g., § 217 moving expenses).

2. A second possible solution is to allow married taxpayers to file as single. This would eliminate the marriage penalty, but not the single penalty, since it leaves single taxpayers with the same higher rate schedule provided by current law. And it leaves the housewife with a decisional disincentive to work—she will still pay more than her husband pays if she stays home.

Advantages

This eliminates the marriage penalty only and, as a result, has a considerably lower revenue loss associated with it, without raising taxes for anyone.

Disadvantages

This is a partial solution and will still leave a marital differential in the tax code. A married wage earner will be taxed more heavily if married to another worker than if married to a person with little or no income. This will leave intact part of the present disincentive from entering the labor market which now faces a married woman. Her husband will lose tax advantages of being married to a nonworker, and both their salaries will be taxed at the higher singles rates schedule. For example, if husband earns $15,000, his tax in year 1 will be $1,635, but in year 2 (with his wife working) he will pay $2,345. She, earning $15,000, will pay $2.345. Their total tax will be $4,690, which is $903 less than present law would require (see example on page 24). In this situation, the primary salary bears the increase in tax by being removed from the married to the single rate schedule.

3. A two-earner deduction was proposed recently by the Treasury as a partial solution to the marriage penalty. It would allow a deduction equal to 10 percent of the first $6,000 (to a maximum of $600). This proposal merely reduces the marriage penalty without doing anything substantive about the problem. It has the greatest impact on the lower income wage earners and the revenue loss is estimated at only $1.7 billion. It has the advantage of being politically easier to achieve because of the low revenue loss, and it does recognize that one-earner couples and two-earner couples are economically different and should not necessarily pay the same amount of tax.

STATEMENT OF LYNDA MOERSCHBAECHER, ASSISTANT GENERAL COUNSEL, YALE UNIVERSITY

Ms. Moerschbaecher. My name is Lynda Moerschbaecher, assistant general counsel, Yale University.

Mr. Chairman, I realize that over yesterday's talks and this morning's you have heard a good deal about what the problems are, where they come from, that we have a marriage penalty and we have a single penalty. Now, the real question is how to solve that problem.

I recommend finding the source of the problem and then seeking a cure, not just a masking of the symptoms. What is the source of both penalties? Well, it is an orange accidentally tossed in the apple cart. I mean, "mandatory" joint filing with an aggregation of income as the 1969 Tax Reform Act has brought in. As was said, it did not exist in the 1948 concept of joint filing.

What is the rationale of mandatory joint filing with an aggregation of income that we have had for 10 years now? Well, it is that two married people pool their income, they share it, they spend it, they save it in common, they use it together; therefore, they comprise an appropriate tax unit; they should aggregate their income to be taxed on it.

This concept is an economic theory; it is one of taxation of uses or a consumption tax. Yesterday afternoon somebody suggested adopting the theory in our entire tax law. The fact is, our entire tax code is and always has been based on the taxation of income, not the taxation of uses. Presently singles, surviving spouses, heads of households, marrieds filing separately, corporations, partners, trusts, estates, all are taxed on income earned or received, not on their pooling or consumption patterns.

This economic theory is a valid concept but it is an anomaly in our tax system. Furthermore, it is an accident in an otherwise orderly tax system. The misplaced economic theory causes both the single and the marriage penalty. What then is the cure?

First, we could return to mandatory single filing. This is the ideal cure because it is a total elimination of the aggregation or pooling concept. This means a return to single filing based on one rate schedule. It is the most direct, simple, and equitable solution.

A second possibility is elective filing. Elective filing as singles for married couples recognizes the true cause of the marriage penalty: that the married couple is not necessarily the appropriate tax unit, and it eliminates it. However, it does not help the singles. Nevertheless, it is a highly effective approach. It does not mask the symptoms, and it is politically acceptable. I feel it should be a first step to eventual single filing.

Deductions and credits are another form. These have the effect of masking the symptoms, unfortunately. The cause of the ill still remains and will resurface.

If you could possibly refer to table 1 and table 2 of the statement that I have prepared for you and look at the last two columns of each, it will show the marriage penalty which remains after the relief provision has been applied and then the "percent of correction."

You will note in the column labeled "percent of correction," in the deduction and the credit there is an arbitrariness of relief. It ranges for the deduction from 14 to 40 percent with no rational basis in the distribution of relief; the credit gives from 10 percent to 246 percent relief. The credit is not only arbitrary in its amount and distribution of relief, but in some cases it is excessive. Neither of these proposals has any real effect on the cause of the problem.

If you would look at the second range of income figures on the deduction proposal, you will see the Bureau of Labor Statistics average two-income earner married couple. This couple makes $509 a week or $26,468 a year. You will see that their marriage penalty, depending upon the distribution of the income, ranges from $334 to $676. The deduction under a proposal of 10 percent of the lower earner's wage up to a $2,000 ceiling provides in actual tax dollars a correction of 40 percent if the split is 30–70; of 30 percent if the split is 40–60; and 33 percent if the split is 50–50. We still have an uncorrected penalty ranging from $200 to $450.

We can go through a similar analysis on the credit proposal with the average two-income earner family. There we have a percent correction ranging from 150 percent for the 30–70 income split to a 34-percent correction for the 50–50 income split.

In conclusion, I would simply like to make two points. First, two-earners are no longer a luxury. It is unreasonable to try to have a policy that keeps the second earner out of the work force. Over half of the working married families have husband and wife both working, and I have pointed out what the average marriage penalty is.

Second, yesterday there was an agreement, or at least a question posed about an agreement, on a list of priorities and preferences to be shown by the Government in our tax laws. As a citizen and as a taxpayer, I disagree with the implication that some citizens are more valuable and deserving than others, that if I am not married I merit less preference, if I am married and have no children I merit less preference, but if I am one of the 16 percent of the families in this country where the husband works and the wife stays home and bears children, I indeed am precious in the eyes of Congress.

I believe a change to elective filing should be made now, and right after that, steps should be taken toward single filing with one rate for everybody.

Family responsibilities should be recognized and they should be based on a set of meaningful deductions, exemptions, and credits. This would provide a rational basis for all taxpayers, something all taxpayers could understand.

Thank you.

[The prepared statement follows:]

STATEMENT OF LYNDA SANDS MOERSCHBAECHER, ASSISTANT GENERAL COUNSEL, YALE UNIVERSITY

I. THE PROBLEM

Since 1969 millions of married taxpayers have been penalized by an unintended consequence of other tax reform. Presently, 38 million taxpayers are penalized by reason of aggregation of their wage with that of their spouse, which when taxed at our progressive rates causes them to pay more than the combined amount each would have paid separately on his or her own earnings. This figure of 38 million does not include the married taxpayers suffering the "marriage penalty" by reason of reduced or halved deductions, credits and exclusions or by reason of filing as "marriage filing separately," or 15 million single taxpayers who may pay the "singles tax."

The present law is not neutral in its effect on taxpayers' decisions. The marriage penalty resulting from the 1969 reform has served as a disincentive to marriage and an incentive to cohabitation, an incentive to divorce, and a disincentive to reentry of the second spouse into the job market. There is no reason for a tax provision to affect such personal and fundamental decisions as marriage, divorce, and employment. These decisions are affected by a tax provision which is not only arbitrary, but unconsidered and unintended.

The present law is not fair. It is in fact "burdensome and unreasonably harsh" to a large segment of society which pays an estimated $11 billion for the "privilege" of being married with both spouses working. And although it reduced the singles tax by limiting the amount of a tax a single could pay to 120 percent of the tax of his counterpart married earner, a 20 percent additional tax burden on the single cannot be called fair.

In 1969 we moved from two rate schedules to four with troublesome definitions attached to some and inexact lines distinguishing all.

The cause of this state of affairs is taxation based on marital status, and in particular, the concept of joint filing. The present law favors highly the "traditional" American family where the husband works and the wife does not. However, this segment of our population has decreased to about 16 percent of American families. Sixty percent of American families had two or more wage earners in the fourth quarter of 1979, according to a report recently published by the Bureau of Labor Statistics, U.S. Department of Labor. The average two-income married couple earned $509 per week, or $26,468 per year. The marriage penalty tax for this average couple representing 60 percent of American families ranges from about $300 to $676.

Mandatory joint filing should be eliminated for several reasons (no alternative presently exists when married filing separately rates are so much higher and deductions, credits and exemptions are halved or reduced).

(1) It causes an "inefficient" tax to be placed on the second earner of a married couple. An "efficient" tax should not be so burdensome as to affect and distort a taxpayer's other decisions.[1] Aggregation of income of two earners at progressive rates has the following effect:[2]

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[1] Harvey S. Rosen, "Is It Time to Abandon Joint Filing?", 30 National Tax Journal 432 (December 1977).

[2] Report of the Action Group on the Marriage Tax Penalty to the Tax Subcommittee of the Interdepartmental Task Force on Women (1979).

If only one spouse works and earns $15,000 the tax liability is $1,635. If the other spouse begins to work at a salary of $15,000, their total tax increases to $5,593. The second earner is taxed $3,958 on his or her $15,000 as compared to the tax of $1,635 imposed upon the first. Is this the intention of Congress? It is unduly burdensome and harsh.

It is obvious that the tax burden on individuals changes arbitrarily with a wedding ceremony.

(2) It does not recognize the socioeconomic reality that 57 percent of all women 16 years and older are in the work force and that a group representing only 16 percent of families are singled out for preferential treatment.

(3) The joint return liability has caused spouses undue hardship time and time again. The relief provisions are very restrictive.

(4) From the point of view of the singles tax no valid tax policy or reason exists for allowing a hypothetical income split with a spouse, usually a wife, where no real split income or control of assets has occurred. The single earner with $25,000 income is disadvantaged as compared to the married earner with $25,000 income whose spouse earns nothing. Additional family responsibility is best recognized through deductions, exemptions or credits. The effect is then to help the individual without causing a widespread penalty to many others.

(5) Most important, Congress did not legislate a marriage penalty or a single penalty through mandatory joint filing. These are the unforeseen results of other reform.

Some commentators defend the status quo, and in particular the joint return for marrieds, by citing the "principle" in the tax law of aggregation—or that the couple is the appropriate taxing unit, in disregard of the individuals. Therefore, couples with equal income, regardless of who earned it or in what proportion, should be taxed equally. For example, if a husband earns $25,000 and his wife earns zero, they should pay the same amount of tax as the husband who earns $15,000 whose wife earns $10,000.

The underlying question one must ask before accepting this "principle" is "who is the proper taxpayer—the individual or the couple?" Those in favor of joint filing argue that the married couple is the entity to be taxed because they in fact pool their income. They enjoy it in common, spend it or save it in common. Thus, the joint filing rule makes the *user* of income the taxpaying entity. As one commentator has stated, "No one can be convinced by, or even understsand, the arguments for joint filing unless he or she is willing to at least discuss the possibility of taxing individuals on the basis of income they *enjoy, rather than on the income they earn.*"[3] (Emphasis added.)

The theory of the taxation of use of income, or a consumption tax, is indeed a valid economic concept. However, since 1913 the Internal Revenue Code Subtitle A, Income Taxes, has been premised on the taxation of the entity earning the income. With the exception of the eleven years from the time that I.R.C. §1(a) was enacted in 1969 (joint filing based on aggregated income) to present, the scheme of income taxation has been consistent—the earning entity is taxed, whether it is a corporation, the partners of a partnership, a trust, a single individual, even married persons filing jointly until 1969 (income was not aggregated as it is today), heads of households, surviving spouses and marrieds filing separately.

The concept of sharing of income and using it in common is an economic theory. It is not invalid or wrong; it is simply not the theory on which our entire tax system is based. Our income tax system historically and consistently has taxed income to the earner and not to the user. Joint filing for married couples, then, based on an aggregation of income, is an anomaly in our system.

If comprehensive tax reform changed our system to one of taxation of users of income, or a consumption tax, and all categories of taxpayers were taxed on the basis of their pooling of resources and their beneficial enjoyment of income, then the aggregation concept for married couples may be acceptable. In that case, however, the adult child supporting the elderly parent, the cohabitators sharing income and expenses (even roommates), the wealthy head-of-household supporting a wealthy child, perhaps even partners to some degree, and any other persons with pooling arrangements would be required to aggregate their income.

Economic theory does not always make good tax law.

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[3] Michael J. McIntyre, "Prolegomena to Future Arguments for Individual Filing in the Personal Income Tax," vol. VIII Tax Notes No. 25 (June 18, 1979).

II. GOALS OF TAX REFORM

In the summer of 1969, the Arkansas Law Review published an article[4] by the then Chairman of the Committee on Ways and Means, U.S. House of Representatives, Wilbur D. Mills, entitled "Some Dimensions of Tax Reform."

In that article Wilbur D. Mills outlines some of the standards that the Committee on Ways and Means intended to apply to the many recommendations for tax reform received by the Committee that year. His standards are equally applicable today. He outlined them as follows:

1. The reason for having a tax system

In the long run, it is simply to raise the necessary revenue to pay for the services of the federal government.

2. The smaller the tax base, the higher the rates

A broad base is essential because only by spreading the tax load as widely and fairly as possible can we obtain the necessary revenue without seriously undermining incentives to work and to invest.

3. Neutrality

Our tax system should be as nearly neutral as possible in its effect on decisions made by taxpayers, which should be made based upon the economics of the marketplace rather than on some arbitrary provision written into the tax structure. Certain overriding considerations may bring out limited exceptions to this rule, such as maintaining and encouraging investment.

4. Fairness

Tax reform cuts both ways. Whereas inequities have developed in relation to the government in the form of so-called "loopholes," we must also bear in mind that inequities inevitably develop in relation to fairness from the standpoint of the taxpayer in the form of burdensome and unreasonably harsh provisions.

5. Simplicity

In trying to achieve fairness with regard to particular problems, or in trying to alleviate hardships which have developed, we often end up with a very extensive and complex sounding provision which adds to the total length of the Internal Revenue Code.

Again we are at a point when the public interest in tax reform is intensified. The goals of reform as enunciated by Mills should be applied to the current legislative proposals for tax reform as relating to the comparative treatment of marrieds and singles.

III. CURRENT LEGISLATIVE PROPOSALS

The bulk of the current proposals before the House of Representatives provide the following solutions to the disparate treatment of marrieds and singles: (1) a deduction to alleviate the marriage penalty (Fisher, H.R. 6203 and Conable, H.R. 6822); (2) a credit to alleviate the marriage penalty (Patten, H.R. 6798); (3) elective filing as unmarrieds for married persons (Fenwick, H.R. 3609, Quillen, H.R. 1095, Robinson, H.R. 684, Roe, H.R. 3085, McDonald, H.R. 2553, Quayle, H.R. 3386, Hagedorn, H.R. 4696, and Kemp, H.R. 5815); (4) the use of the unmarrieds' schedule for marrieds filing separately (Hyde, H.R. 4884 and Symms, H.R. 6028, Act Sec. 402); and (5) use of one rate schedule for all individuals (Annunzio, H.R. 108, LaFalce, H.R. 6209, Green, H.R. 1295, Roe, H.R. 3077, Collins, H.R. 207, Hammerschmidt, H.R. 1390, Fary, H.R. 1936, Addabbo, H.R. 2268, Bouquard, H.R. 2916, Minish, H.R. 3256, McDade, H.R. 4467, and Hagedorn, H.R. 4695).

(1) Deduction

A deduction is proposed in a specific amount to offset the marriage penalty tax, a percentage of the lower wage-earner's income, allowed up to a specific ceiling. For example, a deduction of 10 percent of the lower wage up to a maximum of $2,000.

One advantage of this proposal is the recognition that a problem exists. Another advantage is that a deduction is easily understood by taxpayers.

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[4] Wilbur D. Mills, "Some Dimensions of Tax Reform," 23 Ark. Law Rev. 459 (1969).

The disadvantages, however, strongly outweigh the minimal advantage of this
oposal.

It does not eliminate the cause of the problem—filing based upon marital
atus. It does not help achieve marriage neutrality in any way and, therefore,
ill causes the distortion of taxpayers' decisions as described in Mills' stand-
d of neutrality.

In terms of dollar relief, it does little to correct the marriage penalty tax. The
nount of relief chosen is arbitrary and varies from taxpayer to taxpayer. Please
fer to Table 1 for the amount of uncorrected penalty remaining at various
come levels.

In the case of the average couple with two earners (Bureau of Labor Statis-
cs) where the lower income is 30 percent, the amount of correction is 40 per-
nt of the penalty. The same couple whose incomes are distributed 60 percent
one earner and 40 percent to the other enjoy a correction of only 30 percent,
does the couple whose incomes are evenly split. A quick examination of the
'ercent of Correction" column shows corrections ranging from 14 percent to
percent. The variation in relief has no apparent rational basis and does not
en correct the problem halfway in any case.

It perpetuates an aggregation of income at progressive rates. In addition, it
"unfair" by the Mills' standards because it does nothing to help the singles
edicament while still favoring married one-earner families and giving some
ight relief to marrieds with two earners.

) *Credit*

A credit of 10 percent of the lower wage up to a $500 maximum is proposed.
he proposal requires coordination of this credit with other existing credits.

The advantage to the credit proposal is that, in addition to recognizing a prob-
m, it extends greater relief to a larger number of taxpayers.

However, the credit proposal bears many of the same flaws as the deduction
oposal—no effect on the root cause of the marriage and single penalties, and
bitrary amounts. Although a credit is generally seen as "fairer" than a deduc-
on because of the dollar for dollar offset, at some levels it creates a "marriage
onus" because it overcompensates. In the other cases, it does not correct enough
offset the penalty. (Where a "marriage bonus" occurs, it serves only to ag-
avate the remaining singles tax problem and it is unfair to all other taxpayers
favor a small group of marrieds.) Please refer to Table 2.

An examination of the "Percent of Correction" column shows a range of correc-
on from 10 percent to 246 percent. Certain configurations of combined income
up to $30,000 (although not all) enjoy the "marriage bonus." The average
o-earner couple (Bureau of Labor Statistics) enjoys relief ranging from 74
ercent where income is split evenly to the marriage bonus position of 150 per-
nt where the income is split 70 percent–30 percent.

) *Elective Filing as Unmarried for Married Taxpayers*

The proposal to permit married couples to elect the unmarried rate schedule
they file separate returns has gained considerable support within Congress.
he advantage to this proposal is that it recognizes the root cause of the problem
the marriage penalty tax—the aggregation of income and the taxation of
arrieds based on their marital status. It recognizes by the election provided
at in some cases joint filing is advantageous and in others it is disastrous. It
oes not hold sacred the very new and inconsistent concept of aggregation of
arried persons' income (or, in other terms, the time-worn and sociologically
ete concept of loss of individual identity when one marries).

Thus, if two wage earners decided to marry and continue working, they
uld elect to file as if single and not face the extra cost of marriage now present
the tax law. On the other hand, if the same couple decided to marry and the
ife decided to stay home to raise a family, they could elect to file jointly for
e benefits appurtenant thereto. Thus, the tax law would not operate to distort
taxpayer's other decisions.

However, a disadvantage is that the single earner with an income equal to
at of the husband whose wife decides to stay home is as penalized as he was
efore—solely because he has chosen to remain single (perhaps he had no choice
the matter).

Another so-called disadvantage is that married couples will have to calculate
eir tax both ways to determine the better mode of filing. (The saving of
undreds or thousands of dollars seems worth the extra time spent.)

The Report of the Action Group on the Marriage Tax Penalty to the Tax Subcommittee of the Interdepartmental Task Force on Women views elective single filing as a viable first step toward eventual individual filing.

See the discussion under (5), infra, for points of concern regarding the allocation of income, deductions, credits, etc.

(4) *Use of unmarrieds' filing schedule for marrieds filing separately*

This proposal is basically the same as the marrieds' elective filing as single, except that no election need be made. The married filing separately schedule is simply eliminated and the heading to § 1(c) is rewritten to include unmarrieds and marrieds filing separately.

(5) *Individual filing with one rate schedule*

The proposal to return to "pre-1948" individual filing is a simple, direct approach to achieve equity among taxpayers while providing a consistent underlying theory and rationale—that income is taxed to the one who earns it. All but one rate schedule in § 1 would be repealed (except for the schedule for trusts and estates which is not at question here). All taxpayers then would file a return based on the income he or she has earned or received and would be taxed at the same rate.

Family responsibility would be handled by deductions, exemptions, or credits, not a proliferation of rate schedules. As we have witnessed over the years since 1948, whenever another group disadvantaged by the tax laws is identified, there is much pressure put to members of Congress for a change in their favor. So far the changes have been accomplished by adding new rate schedules. In turn the new rate schedules have created another disadvantaged group. It is time to recognize that additional rate schedules are not the proper means of differentiating family responsibility or need.

The objections to the proposal are as follows:

(a) It is said the proposal ignores the principle of aggregation or the concept of sharing of income. As discussed above, this view reflects an economic benefit theory foreign to the remainder of our tax laws. The "principle" did not emerge in tax commentaries until sometime after the fact of aggregation was discovered. Therefore, it is not sacred. And when unfair and harsh, it must be removed from tax policy. The couple is not a proper entity or tax unit; the individuals earning the income are proper tax units. No compelling reason exists to force one wage earner and two wage earners to pay the exact same tax simply because what they have in common is having said "I do."

(b) The taxpayers in community property states will have an advantage. With respect to community property laws in eight states, proposals for single filing or elective single filing disregard the automatic income-splitting of the state law. In 1930 *Poe* v. *Seaborn*, 282 U.S. 101, gave effect to community property laws for federal tax purposes. However, in 1945 in *Fernandez* v. *Wiener*, 326 U.S. 340, the Supreme Court held that a federal definition of property could supersede the state definition for federal tax purposes. The federal tax laws can also adopt a federal definition of income and, in fact, have done so in other sections of the Code where community property is disregarded (ERISA, FICA, certain innocent spouse rules).

Ideally the tax low would recognize the income-splitting of community property and permit it where the state's community property laws bear economic substance and reality by granting actual ownership and control to both spouses (as does California law since 1975, and others). Thus in states of actual joint ownership and control, the concept of taxing the income to the one who earns it or the income from the property to the one who owns it is not violated by the 50-50 community property split.

(c) The possibility of "bedchamber transactions," or a shift of investment income to the lower bracket spouse is handled quite simply either in the elective single filing or required single filing proposals. Income from property is taxed to the title holder of the property. A presumption could also be made of a 50-50 split if that were desirable. Expenses attributable to the property would be handled in the same manner as the income.

(d) The necessity of "intraspousal booking" to allocate the various deductions, credits and exemptions is cited as an objection. It is simply not true. For either the elective or required single filing, deductions not attributable to property can be split 50-50, or pro rata based on earned income, or even as the couple sees fit.

(e) The administration of this system is termed difficult. However, the matching of income, deductions, credits, etc. can easily be done on a combined individual return as now used in New York, Wisconsin, Virginia and the District of Columbia. Spouses report on the same form, but separately in individual columns.

(f) It is said that a return to single filing is not politically feasible. The revenue loss is the main reason given. The present proposals all call for a move to the lowest rates, the joint return rate. However, as Professor Boris Bittker, Yale University School of Law, has pointed out, a gap may be narrowed from either end.[5] This does not necessarily mean a raise in tax liability for married earners whose spouses have no income. Adjustments for family responsibility should be made through deductions, credits, or exemptions.

The proposal is not "radical." It is in fact simple and direct and cleans up a mess of code sections that now turn on marital status, which has many definitions in the tax law.

Although it is the only proposal that entirely meets Wilbur Mills' standards of neutrality in affecting taxpayers' decisions, fairness and simplicity, some commentators feel we should not adopt it because, after all, taxpayers are accustomed to the present system. When familiarity with complexities prevents a return to fairness and simplicity, all hope for tax reform is lost.

Conclusion

As a summary I quote a thought of Professor Boris Bittker:[6]

"During a 1963 discussion at the Brookings Institution of a forthcoming book on federal taxation of the family, a participant commented: 'I don't think that 27 economists should have been assembled to address themselves to problems which are really partly anthropological, partly sociological, partly anything except what we have competence in.'

"If my extended essay has a unifying theme, it is that theoreticians, whatever their backgrounds, cannot 'solve' the problem of taxing family income. They can identify the issues that must be resolved, point out conflicts among objectives to be served, propose alternative approaches, and predict the outcome of picking one route rather than another. Having performed these functions, the expert must give way to the citizen, whose judgments in the end can rest on nothing more precise or permanent than collective social preferences."

TABLE 1.—DEDUCTION PROPOSAL

Primary earner income	Secondary earner income	Lower wage (percent)[1]	Marriage tax penalty[2]	Deduction allowable[3]	Effective tax rate (percent)	Tax saving[4]	Uncorrected tax penalty	Percent of correction
$10,000	$4,285	30	$174	$428	10.4	$45	$129	26
$10,000	6,666	40	271	666	11.9	79	192	29
$10,000	10,000	50	395	1,000	13.7	137	258	35
$18,528[5]	7,940	30	334	794	16.9	134	200	40
$15,881	10,587	40	599	1,058	16.9	178	421	30
$13,234	13,234	50	676	1,323	16.9	224	452	33
$20,000	8,570	30	412	857	17.98	154	258	37
$20,000	13,333	40	978	1,333	20.2	269	709	28
$20,000	20,000	50	1,697	2,000	23.4	468	1,229	28
$30,000	12,860	30	1,261	1,286	24.7	318	943	27
$30,000	20,000	40	2,741	2,000	28.2	564	2,177	21
$30,000	30,000	50	3,654	2,000	31.2	624	3,030	17
$40,000	17,145	30	2,189	1,714	30.3	519	1,670	24
$40,000	26,666	40	3,819	2,000	33.3	666	3,153	17
$40,000	40,000	50	5,064	2,000	36.7	734	4,330	14

[1] Percent of combined income.

[2] Excess tax paid due to filing a joint return rather than filing as unmarried individuals.

[3] Under 10 percent—$2,000 proposal.

[4] Due to deduction.

[5] This category represents the average 2-income married couple as reported by the Bureau of Labor Statistics for the 4th quarter of 1979. Almost 60 percent of American families had 2 or more wages. The average 2-earner couple earned $509 per week, or $26,468 per year.

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[5] Boris L. Bittker, "Federal Income Taxation and the Family," 27 Stanford Law Rev. 1389 (June 1975).

[6] Ibid., p. 1463.

TABLE 2.—CREDIT PROPOSAL

Primary earner income	Secondary earner income	Lower wage percent of combined income	Tax liability joint return	Marriage tax penalty [1]	Credit allowable under 10 percent—$500 proposal	Uncorrected tax penalty	Percent of correction
$10,000	$4,285	30	$1,483	$174	$428	[2] $254	246
$10,000	6,666	40	1,987	271	500	[2] 229	185
$10,000	10,000	50	2,739	395	500	[2] 105	127
$18,528 [3]	7,940	30	4,470	334	500	[2] 166	150
$15,881	10,587	40	4,470	589	500	89	85
$13,234	13,234	50	4,470	676	500	176	74
$20,000	8,570	30	5,137	412	500	[2] 88	121
$20,000	13,333	40	6,728	978	500	478	51
$20,000	20,000	50	9,355	1,697	500	1,197	29
$30,000	12,860	30	10,586	1,261	500	761	40
$30,000	20,000	40	14,092	2,741	500	2,241	18
$30,000	30,000	50	18,698	3,654	500	3,154	14
$40,000	17,145	30	17,299	2,189	500	1,689	23
$40,000	26,666	40	[4] 22,198	3,819	500	3,319	13
$40,000	40,000	50	[4] 29,398	5,064	500	4,564	10

[1] Excess tax paid due to filing a joint return rather than filing as unmarried individuals.

[2] Bonus.

[3] This category represents the average 2-income married couple as reported by the Bureau of Labor Statistics for the 4th quarter of 1979. Almost 60 percent of American families had 2 or more wages. The average 2-earner couple earned $509 per week, or $26,468.

[4] These amounts do not take into consideration the maximum tax on earned income.

The CHAIRMAN. Mrs. Donohue.

STATEMENT OF FLORENCE B. DONOHUE, ESQ., STOTSENBURG AND DONOHUE, P.C., NEW YORK, N.Y.

Ms. DONOHUE. My name is Florence B. Donohue. Up until January of this year I was in charge of the Federal Tax Service at Prentice-Hall. I think that in the report bulletin that I was responsible for at that time, I was one of the first persons that raised the marriage penalty problem after the enactment of the 1969 Act. I am presently an attorney practicing tax law in New York City.

I would like to key in on two goals that have been very important in tax legislation and tax reform recently: simplicity and fairness. It seems to me that the overall simplicity of eliminating those four tables and having only one should have a very strong influence on the Ways and Means Committee and the Congress in deciding how to simplify the tax law. We make our taxpayers decide what their marital status is.

Now, my marital status happens to be that 20 years ago my husband died. I could very easily tell you I am a surviving spouse but I do not meet that definition in the code. For one, it was 20 years ago; the other, all my children are grown up and departed from home. I do not think I should have to make that decision. If I feel like a surviving spouse, I ought to be able to claim that.

But, of course, taxpayers are led astray constantly by having to decide what their marital status is.

Now, even more important, the Revenue Service is constantly put in the position of having to decide on marital status and the Tax Court is too. And the cases come down by the thousands defining head of household, deciding who is married, who pays child support. Some of these problems will remain, of course, in the divorce situation but for the vast population the whole situation would be greatly simplified if we only had one tax schedule.

And I will note that N.Y. State has one tax rate schedule and seems to get along very well with that.

Now. I appeared before this committee back in 1972, I think the first time you had hearings on this question. And the attendance on the Ways and Means Committee was considerably greater at that date, perhaps because there were a few ex-movie stars in the audience at that time.

Mr. **Conable**. It may also reflect the fact that Congress is in recess now.

Ms. **Donohue**. OK, well, I do remember there being more people and I do hope there is great interest. But I am very happy to see the chairman of the committee and the ranking minority member, both of whom are very important to whatever happens in this area.

I have formerly myself favored provisions that would involve deductions and special credits and elective provisions. I think they make the statute and tax return filing more complex. As soon as you have an election, you have to decide which way is the better for you. So you have to do your return twice.

I think we should try to bite the bullet. Mr. Sunley's testimony shows a $28 billion revenue loss by putting everybody on the joint return basis. That is illogical; we would have to use higher rates under present law. But we do face the possibility of tax reduction in the future and a more equitable system.

And that gets me to my second point which is on fairness. Some of my fellow panelists have already raised these things but I have an example to show you. Mary and Joe are at 23 Locust Lane and have a $40,000 income. That is from Joe's salary alone.

Helen and Al at 27, two doors away, also have a $40,000 income make up of $20,000 each. Mary and Joe and Helen and Al all pay the same tax.

But in the house in between at 25 Locust Lane where is Mrs. Bennett, a retired school teacher who lives with her single daughter who is also a school teacher. Her pension and investment income, that is Mrs. Bennett's, is $20,000 and her daughter's income is $20,000. So, they have a combined income of $40,000 also but they do not pay as much tax as the two married couples.

The two classes of people who are most hurt by the marriage penalty are the poor, who are eligible for the earned income credit, and the elderly, who are retired on pensions and might like to get married late in life. When they look at the facts, they do not do it. We should not discourage marriage to the extent we do by having this kind of a penalty situation exist.

I plead for fairness to all taxpayers. I think the most direct and fairest way to provide that is to have some rate schedule equalized among all people at the time when taxes are reduced so that there would be not to much impact on anybody.

I do think the negative income tax is the thing of the future. The earned income credit is what I mean by the negative income tax. Right now it only applies to a very special martial situation—married couples filing jointly with a child or a single parent with a child. If you do not have the dependent child, you do not get it.

But it seems to me that as the revenues from the windfall profits tax are spread, especially to the poor, this negative income tax approach will be used more and more and any kind of penalty on marriage will hurt the poor the most at that time.

I appreciate having been able to appear here.

The CHAIRMAN. Let me commend all of you. These are very well thought out papers and your presentation has been very eloquent and very persuasive. Of course, you have given some of the reasons why the committee will have to take a good look at the larger picture in restructuring the tax schedules, and particularly in its recommendations as to the treatment of families.

There are two problems. First, there is the problem of equity. When you talk about a one-earner family and a two-earner family, you cannot assume that the one-earner family makes more money than each of the two in a two-earner family. You have to assume in an average situation that he makes the same or she makes the same as one of the two in a two-earner family.

If you make that assumption, which I believe is a correct one, then I think you have to conclude that the burden of overall family costs, family responsibilities, lies heavier on that taxpayer than it does on a two-earner family.

Ms. Wenig, you indicated the opposite. The opposite might be true if you assumed that in a single-earner family he made more money. But, you have to assume that he makes the same as one of the others. That, I think, has been the traditional rationale.

Of course, we all know that even 50 years ago or maybe even 20 years ago most of the families were single-earner families. And it has only been in the last few years that we have been seen the rapid acceleration of two-earner families..

How would you comment on that point of equity, Ms. Wenig?

Ms. WENIG. I do want to refer to table 6 of this excellent joint committee report that came out yesterday and which I poured through with enormous interest late last night. Table 6 on pages 34 shows us where the one-earner couple is to be found.

A one-earner couple filing joint returns is to be found if we look at the tax incidence at $50,000 a year income and up. I am looking at the last three items of table 6 showing that the one-earner couple with income of $50,000 and over has produced almost 50 percent of the entire tax paid by one-earner joint return taxpayers.

The CHAIRMAN. That is in dollars and not in numbers.

Ms. WENIG. That is true.

The CHAIRMAN. What I am saying is that this destroys the effectiveness of the argument.

Ms. WENIG. But it is these couples who are most of all benefited by the tax break afforded the joint return couple with one earner. It was these married taxpayers that the 1948 change was made to benefit. And it is these married taxpayers who are being benefited now.

I do not have other figures in terms of numbers but I think this table 6 in terms of dollars shows the interesting bias of joint one-earner couples toward the over $50,000 income. If it turns out that it is these that we are benefiting, may be we really should take a look at our assumptions with respect to the joint return one-earner couple.

The CHAIRMAN. We, of course, need a lot more in the way of demographics on this issue as the dollar figure really does not tell us that much.

Ms. **Donohue.** Mr. Ullman, may I make a comment on that question?

The **Chairman.** Yes.

Ms. **Donohue.** I think a day or two ago the Wall Street Journal talked about the bread-winner whose wife was out working now because she was the one who brought home the bread. I think economic reasons are the reasons so many women are working, especially under the $20,000 level: that they have to work and that we should realize that the economic base of those families depends on the women working. And that is an important consideration.

Ms. **Moerschbaecher.** May I add to her comment? I think that goes to the question of whether your assumption is in fact correct in today's socio-economic reality. If you compare the one-earner family to one of the two-earners, then why do we have over 50 percent of the couples having two earners in the family? It is out of the economic need.

The **Chairman.** Well, I recognize the validity. We are living in a changing society, of which there is no question. I represent a rural area, and what you are saying is not really that true in my area. There are not nearly the number of two-earner families as there are in the urban areas.

But we represent all of America in our challenge here, and we are going to have to look at the demographics of America.

Ms. **Moerschbaecher.** May I comment on that point also? I am sorry to have so many comments.

I am originally from Wisconsin, which is also a rural area. My parents live in Genoa City, Wis. The population is about 1,000. My mother and dad always had to work, both of them. My sister and brother-in-law live in Williams Bay, Wis., total population of about 1,500. My brother-in-law and my sister both have to work to make ends meet. My brother and sister-in-law live in Lake Geneva, Wis., population I would say of about 6,000 people. Both my brother and sister-in-law have to work to raise their family.

I too am from a rural area. I think there are more people than you think in rural areas where both individuals in a couple work.

The **Chairman.** Well, it is certainly getting more that way. But, I think that we have a very difficult problem on the committee. We are going to proceed and get the demographics in proper shape and get the statistics and updated information on exactly where America is on this issue today.

But, beyond that, we are caught in somewhat of a bind. I think all of you would agree that if we make the kind of adjustments you propose—and you are all recommending I think that each individual be considered as an individual taxpayer and have only one tax rate—there is a rather tremendous cost to the Treasury.

You have to do it one of two ways. You either have to vastly increase the taxes on the single earner families or you have to find the revenue some other way, or suffer a huge deficit.

Now, we are under, I think, a clear mandate now to get our fiscal affairs in order and balance the budget. We are not in a posture where we can lose revenue. We have to pick it up. I cannot imagine in solving this problem by raising the taxes on one segment to lower it on another. That is just not in the world of political reality.

Do you have any ideas on that?

Ms. Donohue. Mr. Ullman, if you choose the tables for married persons filing separately for everybody you would promptly raise everybody's taxes. Those are very high rate taxes. I think we have to spread the burden in some equitable fashion and it is not right to say that married people both working should carry the burden.

The burden should be spread but we will probably face a situation in the next 2 years where there will be some tax reduction. At that time, we should change the spread of the taxes. I think that is what we have to do.

Ms. Wenig. Again, table 8 and table 9 on pages 49 and 50 of the joint committee's report shows an overall tax increase as the effect of requiring married couples to file as single persons. I am not quite sure how this tax increase was computed, but there is an overall tax increase.

If that is so, that tax increase can certainly, in order not to be an increase, could be spread equitably among all taxpayers.

And on the other hand, what we are told today by Treasury is that there would be a $12 billion cost of doing away with the marriage penalty tax. I think that is on the basis of the optional filing.

If there is a $12 billion cost that means there is a $12 billion tax that a sizable group of the population is bearing in order to benefit presumably the intended beneficiaries which constitute no more than 16 percent of the population, the intact family with spouse at home with child or children at home.

The Chairman. But if you go to a single-earner family which makes $20,000 and has five or six children, and say, "we have to increase your taxes in order to accommodate the problem of the two-earner family," I think you are in a very impossible political situation.

There is no question that you are calling for a reduction in taxes for the two-earner families.

Ms. Wenig. We are also calling for a fairer treatment of the single taxpayer. We think that both the married two-earner couple and the single taxpayer are put at the disadvantage in comparison to the 16 percent of the population which Congress wants to benefit. We admit there has to be a lot of arithmetic; there has to be a lot of work done. It cannot be done simply by going to one of the tax rates which now exist.

The Chairman. But you are saying that the single-earner family that makes $20,000 already considers itself under a heavy tax burden yet, you are also saying that the burden has to be increased on that family.

Ms. Wenig. Well, I want to look at need. Again, I want to see the demographics. According to this table on page 34, the biggest burden of a tax change should come about for those who have income of $50,000 and over. One can always change tax brackets. One can reconstitute the entire tax table.

If we look at any number of marriage tax tables, we will see odd little jogs here and here. I think it time to do the arithmetic in arriving at a single tax structure that will help everybody, or, at least, harm as few as possible.

The Chairman. I hope the census information might be helpful in that regard. I think it is going to be very difficult for us to move intelligently unless we fully understand where America is on this issue.

These hearings are also going to be helpful. You have given us a lot of valuable information.

But until we really know statistically where America is and where the burden of any tax changes would fall, it is going to be almost impossible for us to fully correct the situation. That is why some of us, both Mr. Conable and I, have supported legislation that would at least move in the right direction, pending a fuller and more accurate understanding the demographics of America.

This is probably not the final solution. But, if you would assume that you can't move to a final solution now, I think that you have to conclude that at least we probably should make a start.

Ms. **Moerschbaecher.** Mr. Chairman, may I make a comment on your comment about the raise in rates and, therefore, tax liabilities on the single-earner married couple. If you look at table 8 of the Joint Committee report and assume that everybody were moved to the singles' rate schedule, your concern is that the single-earner married couple would pay more tax.

But, as the table shows, there is a total overall increase in revenue by moving to the singles' rates. The extra tax revenue could be allocated to those with family responsibilities on the basis of meaningful credits, deductions or exemptions. Therefore, even though there is a single rate schedule for all earners, it could be adjusted so the single-earner married couple does not have a tax liability increase.

That is a more rational system that all taxpayers would understand. If I look at the single earner of a family and I see that he is paying on the same rate schedule as I, nevertheless his total tax liability is less than mine because he has additional family responsibility, I can accept that. If he is being favored in the eyes of the Government by having a different rate schedule with different progressivity, it is unacceptable. I think you will achieve equity faster that way.

The **Chairman.** You can move only so far in that direction. We have increased the personal exemption even in this year's tax return from $750 to $1,000. But I would be very reluctant to try to solve that problem by increasing the exemption. I think that would create other problems in society.

Ms. **Moerschbaecher.** Without the additional revenue, I understand that you couldn't do that. This is assuming that you have this additional revenue.

The **Chairman.** Ours is a revenue problem. Somebody has to pay the $12 billion. That means substantial increases, as you know, for a lot of taxpayers in America. That is the political problem and why we can't really come to the ultimate solution until we know who that burden would fall on and whether it is justified.

Ms. **Moerschbaecher.** That is why I feel, perhaps alone on the panel, that the first equitable move is to elective filing and then over a period a change to a single return system.

The **Chairman.** Even that, though, is very costly.

Ms. **Moerschbaecher.** On the other hand, as Mrs. Fenwick has pointed out, there is an increase in revenue coming in from the oil tax. And, I believe, although unfortunately she wasn't here to talk yesterday, that her idea is that we have additional revenue, that we can afford the $8.3 billion, which is the cost of the elective filing proposal we received from Mr. Sunley yesterday.

The Chairman. I think I have to move my colleague, Mr. Conable, now.

Mr. Conable. We were always going to spend the Vietnam dividend, too. Somehow it all dissipated.

Ms. Moerschbaecher. My income does, too.

Mr. Conable. Thank you for appearing before us. You are a high-powered panel. I think your testimony has been extremely good and detailed and we appreciate it.

I think the chairman's line of questioning emphasizes one of the great problems of Government: the vested interest we have in things as they are, given the pressures of Government, and how difficult it becomes to change structure with such a conservative force as Government behind it.

The fact is that society changes a lot faster than Government does and that is what we are up against right here in this particular problem. There seems to be a consensus on the panel that we have got to go to separate filing and that that would be the millennium, that regardless of fiscal pressures of other problems we ought to move in that direction.

Ms. Moerschbaecher says that moving through the elective process would be some improvement. The chairman says, as I feel, that we need some improvement regardless of whether or not we can achieve the millennium, and we at least need to make a down payment on our good intentions here, which is about what our deduction or credit proposal would do.

Let us assume the millenium is achievable by virtue of some sort of remarkable windfall to the Government which permits tax cuts in the dimensions you would like and that the other conflicting claims for tax cuts can be somehow put aside and we were going to do this.

I don't insist on an answer now, but I would appreciate from a group like this that has thought deeply about the issue some sort of a memo relating to the appropriate methods of apportioning deductions, credits, exemptions and unearned income in the event we do adopt separate filing, because that becomes an issue.

We also have the problem, of course, of the fact that children are taxed separately from their parents and, while we insist that the family unit be the taxable unit, we do not insist on having the children included in that unit as the system is now, which is another aberration in the social philosophy back of taxing the family unit. I think it would be helpful to us to know how you think we should handle this kind of a problem in the event we were to go to single filing.

We are in this constant tug here between those who like to think that the family unit is still traditional and that it exists as a nuclear family with two children and one working parent, between the yearning Americans have for that kind of a simple unit, building block of American society and the realities of today's society, which are very different.

If what the people think is real is what is real in a democracy, we have to engage in some presumptions in favor of the current mythology as well as the current demographics. But obviously any group like your panel is going to want to deal more in realities than politicians are.

I think your testimony today has been very helpful. If, thinking about the apportionment of deductions, credits, and exemptions in a single filing system, you come to some conclusions that you think would guide us as we try to move this reluctant giant in the direction of reality and away from myth, it would be appreciated here by the committee.

If any of you want to comment on that you may, but I don't think there is any comment necessary.

Ms. Moerschbaecher. I would like to say just that this is the first time I have testified and I truly appreciate the opportunity to speak with you. I think we have had quite a good interaction and exchange of thoughts, which I am not sure I expected.

Mr. Conable. That is what it is all about.

Ms. Moerschbaecher. I am really delighted that this has occurred, and I thank you for the opportunity.

Mr. Conable. I want to repeat that you should not be distressed by the lack of attendance here today. Even were the Congress to be in full bloom, something that it is not right now as we are having a little spring hiatus—if it were to be in full bloom, there probably would be only 10 of us here because everybody else would be off on frolics of their own in some other committees or over on the floor or dealing with constituents.

The important thing is that we get good, solid testimony into the record, which gets careful analysis by staff and is summarized for us and becomes the basis for what action we decide to take in this interaction of myth and reality that I was talking about earlier.

We appreciate your attendance, and I hope you won't feel that you have wasted your sweetness on the desert air because of the limited number of people present this morning. It is one of the unhappy coincidences that we adjourned 2 days earlier than expected because of a rather modest legislative schedule. Thank you.

The Chairman. Thank you very much. Let me add to what Mr. Conable said. This is an ongoing process. You are all expert, and you are all studying this problem. As new information becomes available to you, would you keep the committee informed? This is a never-ending request. Thank you. We appreciate your testimony.

[The following was subsequently received:]

Bridgeport, Conn., *April 11, 1980.*

Hon. Barber B. Conable, Jr.,
Ranking Minority Member, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

Dear Congressman Conable: You were kind enough to ask the panel of witnesses, Donohue, Moerschbaecher, Sanchez and myself, who appeared before Chairman Ullman and you on April 3, 1980 for a memorandum "relating to the appropriate methods of apportioning deductions, credits, exemptions and unearned income in the event we do adopt separate filing."

With respect to unearned income, we would confirm the concept that income from property should be taxed to the owner of the property, while recognizing that since 1948 Congress, the courts and the Internal Revenue Service have devised sophisticated tests for determining the true owner when property interests are transferred between related taxpayers. If spouses own property jointly, or as community property, income from that property can be taxed one-half to one spouse and one-half to the other spouse, in accordance with their ownership of the property. Income from property transferred to one spouse by the other spouse can be taxed to the spouse who is the actual owner of the property. Various judicial and statutory tests have been developed since 1948 to test ownership. These tests, applicable not only to spouses, include the "Clifford trust" rules of Subpart E of Subchapter J of the Code and IRC §704(e), with respect to family partnerships. Because of the *Crown* case, there may have to be drafted a special provision with respect to interspousal loans, attributing income from loaned property to the lender.

Exemptions, exclusions, deductions and credits can be allocated in one of several ways: split 50–50; allocated in accordance with gross income; attributed to the spouse who incurs the expense which gives us to the deduction; or allocated, as New York does for nonbusiness deductions, as the spouses themselves may determine. The two return filed by husband and wife can in fact be a single return, with three columns. For deductions, exclusions and exemptions, the first column can list the total and the second and third columns can list each spouse's share or amount of the total.

This is a simple answer to your question and therefore a most incomplete answer. Each deduction, exclusion, exemption and credit must be examined to see whether the appropriate treatment for each is the 50–50 split or some other method of apportionment or allocation. The answers may be different for different kinds of deductions.

It may be that deductions from gross income toward adjusted gross income, principally certain business expenses and alimony, should be deductible only by the taxpayer who incurred these deductions. Other deductions may be attributable to property and therefore should be deductible only by the owner of the property. If property is owned jointly, deductions arising out of joint and several liability may be able to be taken by either spouse, or allocated between them as they decide. Certain deductions, such as a taxpayer's personal exemption, may be considered personal to that taxpayer and deductible only by him unless his spouse has no income of her own. The multiple support agreement for the dependency exemption may be extended to husband and wife. Certainly something must be done in order to prevent proliferation of cases such as a recent one which held that since a couple's income was community and split 50–50 between them, neither could prove that he or she paid more than 50 percent of the support of their children and therefore neither was permitted dependency exemptions on his and her separate return.

In addition to the determination, on a section by section basis, of the appropriate methods of allocation or apportionment, the exemption, exclusion, penalty tax or the nonmarriage penalty tax must also be examined in detail.

Certain deductions or exclusions have dollar ceilings. Although two single taxpayers are allowed, between them, two ceiling amounts of the deduction or exclusion, once they marry they are allowed only one ceiling deduction or exclusion or a deduction which is less than two times the ceiling deduction available to a single taxpayer.

Some credits, deductions or exclusions are limited by the taxpayer's income and may therefore be decreased in amount or denied entirely for two taxpayers who marry and are presently required to aggregate their income on their joint return.

On the other hand, a few exclusions, deductions or credits are automatically doubled for married taxpayers without regard to whether both incurred the allowable deduction or whether both, or only one, has income.

Again, each of these Code sections must be examined. Here, the principle to be followed might be that no two taxpayers, if married, should be deprived of tax benefits available to each if single. Nonetheless, the rule that if one married taxpayer itemizes his deductions, his spouse must, on her separate return, may have to be retained.

All I have done so far is what you have done, to ask, in somewhat greater detail, the questions that must be answered.

Limitation of time has permitted me only to indicate possible alternative answers.

My colleague, Professor Stuart Filler, and I, have assigned to an able student, Richard Polesak, the task of research and legislative drafting that concrete and detailed answers to your questions require. We are in hopes that the three of us will prepare and send to you, within approximately six weeks, a memorandum which proposes explicit answers to your question.

My thanks, again, for the courtesy which Chairman Ullman and you extend to us at the hearings on April 3.

Sincerely yours,

MARY MOERS WENIG,
Professor of Law.

The CHAIRMAN. Would the next panel please come to the witness table, James Druker, Paul Mapes, Barbara Schaer, Alan Epstein, Edwin Taylor.

We want to welcome all of you to the committee. Without objection, each of your statements and supplemental materials will be printed in the record. If you do not have any contrary views, we will proceed in the order that I mentioned. Is that appropriate?

Then we will recognize Mr. and Mrs. Druker from Mineola, N.Y. Welcome to the committee.

STATEMENT OF JAMES O. DRUKER, NEW YORK, N.Y.

Mr. DRUKER. Actually, we are from New York City. My office is in Mineola.

I appear here today, in an individual capacity, in the hope that I, along with the others who are here, can help to rectify a piece of legislation which, for the past decade, has irrationally discriminated against millions of married working couples, of which my wife and I are one.

I am appearing here at no small expense to myself, both in terms of travel and lost wages. I am sure you are aware of the New York City transit strike which caused us some problems in getting here. However, I welcome this opportunity after 4 years of frustration brought about by the Internal Revenue Service's application of the congressionally enacted "tax on marriage."

Commencing in 1975, each year I have filed a timely 1040 return, in which I acknowledged my marital status. To each return I attached a letter explaining that I was only paying that tax which I would owe if I were unmarried, adding that I was willing to litigate the constitutionality of the "penalty" and that I would pay the tax if so directed by the courts. My case is presently pending in the U.S. Tax Court.

Ironically, the IRS is now seeking penalties against us claiming our conduct constitutes willful disregard of the tax laws, so that if we lose, we will now in addition to interest and the marriage tax, we will now be required to pay penalties for what they have termed a willful disregard of the law.

Throughout our lengthy battle with the IRS, I and my wife have asked each auditor, conferee, and Government attorney for any valid reason why we should be compelled to pay several thousand dollars per year more in taxes than if we were to be divorced and simply to continue to live together.

To date, no one has even attempted to provide an answer to this troubling question, let alone any kind of satisfactory answer. I think it is worth noting that in terms of the ignorance I think of the general populas to the marriage tax penalty several of the auditors that we came up against were amazed that there was such a thing. One of them even stated she was going home to rework her taxes with her husband who also worked. Even the people within the Internal Revenue Service are unaware of the tax penalty.

I cannot begin to tell you of the frustrations which I encounter each year when I compare our tax computations pursuant to the married tables with those computed pursuant to the single tax. For this past year 1979, the difference is approximately $3,500.

Now, I worked it out this week with a calculator based on current interest rates of approximately 16 percent. What this means is that at the end of 10 years, my wife and I will have approximately $86,000 less in our pockets than we would have had or will have if we obtain a divorce this year and live together as a single couple. Again, I ask the question why?

I might just add from the questioning of the previous panel it appears that the only question that seems to be troubling anybody is where is the additional revenue going to come from? Now, without going into all of that or the windfall profits tax, I can only say that that to me is not a valid answer for refusing to alleviate this inequity to say that if it is agreed that the marriage tax penalty is indeed unfair and unconstitutional, it is not an answer to say that, well, the Government will lose the money if we rectify the inequity.

Now, should the Congress fail to cure this, my wife Joan and I have discussed it at length—we were going to obtain a divorce by the way at the end of last year, but she is pregnant. We didn't want our child to have the stigma of being illegitimate. But, we have jointly concluded with reservation, we are going to obtain a divorce sometime before the end of this year.

Rather than getting into the situation of litigating a sham divorce if we obtained a remarriage the following January, and that case is being litigated, we will obtain a divorce and continue to live together so there is no reason to think it is a sham.

It is repugnant to us. I think it a shame that we and other couples have to do this, but we will do it because $86,000 is a tremendous penalty to pay to have that marriage certificate continue to hang on our wall.

[The prepared statement follows:]

STATEMENT OF JAMES O. DRUKER

I am appearing here today in an individual capacity in the hope that I can help to rectify a piece of legislation which, for the past decade, has irrationally discriminated against millions of married working couples. My wife and I are one such couple.

I am appearing here at no small expense to myself, both in terms of travel and of lost wages. However, I welcome the opportunity after 4 years of frustration brought about by the IRS's application of the Congressionally enacted "tax on marriage".

Commencing in 1975, each year I have filed a timely 1040 return, in which I acknowledge my marital status. To each return I attach a letter explaining that I was only paying that tax which I would owe if I were unmarried, adding that I was willing to litigate the constitutionality of the "penalty" and that I would pay the tax if so directed by the Courts. My case is presently pending in the United States Tax Court.

Throughout my lengthy battle with the IRS, I have asked each auditor, conferee, and Government attorney why my wife and I should pay several thousand dollars per year more in taxes than if we were to be divorced and continued to live together. To date, no one has even attempted to provide an answer to this troubling question, let alone a satisfactory answer.

I cannot begin to tell you of the frustration which I encounter each year when a I compare our tax computations pursuant to the married tables with those computed pursuant to the single tables. For 1979 the difference is approximately $3,500.00. If this inequity is allowed to continue, I will be penalized $86,566 over the next ten years.[1] Again, I ask "why?"

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[1] Based upon current interest rate of 16 percent.

Should the Congress fail to cure this, my wife and I will have no choice but to obtain a divorce and continue to live together. To do otherwise would be economic suicide.

The CHAIRMAN. Mrs. Druker, did you want to add to that?

Mrs. DRUKER. No, sir. Incidentally, I was finished when the light came on.

The CHAIRMAN. All right. Thank you for your sad tale. I fully concur in your frustration.

Paul Mapes of Arlington, Va.

STATEMENT OF PAUL A. MAPES, ESQ., ARLINGTON, VA.

Mr. MAPES. Thank you. I am an attorney and I live in Arlington, Va. I have been married for 4 years and during this period my wife and I have paid approximateely $7,000 more in Federal income tax than we would have paid if unmarried.

In 1977 we brought a tax suit in the U.S. Court of Claims challenging the constitutionality of this additional tax burden. Although the Court of Claims eventually ruled against us and the Supreme Court denied certiorari, our suit was not entirely unsuccessful.

It attracted increased public attention to this peculiar aspect of the tax code and led us to assemble a substantial body of information concerning its origins and effects. Today, I would like to very briefly summarize that information.

Concisely stated, our research shows that the tax penalty on marriage is entirely inadvertent, logically indefensible, extraordinarily poor social policy, and possibly unconstitutional.

As you surely know, the so-called "marriage penalty" is the result of the Tax Reform Act of 1969. What you may not know, however, is that at the time this legislation was enacted, apparently few, if any, Members of Congress knew that it would create a tax on marriage. This inadverent origin of the marriage penalty has been openly acknowledged by at least one former Member of Congress, Martha Griffiths.

It is further confirmed by the fact that the contemporaneous legislative history of this legislation is entirely silent on this aspect of the law and by the fact that the 1969 amendments failed to make the necessary adjustments in the tax withholding schedules. The reason for this oversight is obvious. The authors of the 1969 legislation were unconsciously proceeding under the assumption that married women did not work outside of the home. Hence, they totally overlooked the law's effect on two-income working couples.

The fact that the marriage penalty law through inadvertence and stereotyped assumptions about married women is an important fact that this committee should recognize, but, in my view, it is even more important to recognize that the marriage penalty is highly inequitable.

When the Tax Reform Act of 1969 was enacted, Congress was attempting to respond to complaints by single persons that they bore a disproportionate share of the Federal tax burden because married persons were permitted to file joint returns under which a husband and wife were allowed to "split" their incomes. When one spouse, usually the wife, had no income, this option meant that a married couple paid less in total taxes than they would have paid if unmarried.

To remedy this perceived inequity, Congress lowered tax rates for single persons. In doing this, however, Congress completely ignored the fact that, just like single persons, two-income married couples derived little or no benefit from income splitting and, therefore, just like single persons, were also entitled to be included in the tax reduction.

It would not have been difficult for Congress to have done this. The law could have simply given married taxpayers the option of filing either jointly or as single persons depending on which method produced the low tax liability.

By themselves the inadvertent origins of the marriage penalty and its inequities should constitute sufficient reason for remedial legislation. These considerations, however, pale in comparison to the other reasons for eliminating the marriage penalty.

For example, it is now clear that the marriage penalty substantially intereferes with the free exercise of the right to marry. A significant number of couples have already divorced to avoid this tax and others have postponed their marriages or have been deterred from marrying at all.

Additionally, it should be recognized that economists have concluded that the present system of taxing married couples has also deterred some married women from seeking employment outside of the home. It is primarily for this reason that a number of European countries have recently revised their income tax systems to permit married women to be taxed without regard to their husband's separate earnings.

Moreover, it has been said that the very existence of the marriage penalty tends to generate a loss of public confidence in the legitimacy of the entire Federal tax system. As the Chicago Tribune observed: "For the system to work, it must be fair and must be perceived as fair by those who support it."

On top of all its other faults, the marriage penalty is of questionable constitutionality. Although in recent years two lower Federal courts have, with apparent reluctance, upheld the constitutionality of the marriage penalty, the Supreme Court has not yet considered the issue. When it does, it is by no means clear that the marriage penalty will be upheld. Only 2 years ago the Supreme Court held that the right to marry is a fundamental liberty that cannot be infringed without proof that such an infringement is required by a compelling governmental interest. Moreover, in 1931 the Supreme Court found constitutional a Wisconsin tax statute that burdened marriage in exactly the same way as the existing Federal tax laws.

In concluding, I note that these hearings are the third time that Congress has heard testimony on this problem. By now, all of the essential information has been brought to your attention and corrective legislation is long overdue. There is only one appropriate response—married persons should be given the option to be taxed as individuals. This is the approach taken in H.R. 3609 and I fully endorse its enactment.

The CHAIRMAN. Thank you, Mr. Mapes.
Barbara Schaer?

STATEMENT OF BARBARA J. SCHAER, VICE PRESIDENT, TAX INFORMATION CENTER, NEW CONCORD, OHIO

Ms. SCHAER. Hello. After hearing all of this illustrious testimony, it makes you want to throw out your whole thing and start all over again because everything has probably been said so many, many times to you.

To clarify who I am, I am vice president of a tax planning firm called Tax Information Center and we deal with clients whose incomes range from $15,000 to $350,000 a year, the common goal being to build a better financial world for themselves and their loved ones.

Ninety percent of our clients are very religious people and would most definitely disagree with the idea of living in sin, not marrying, getting divorced, and what have you in order to achieve their goals. Therefore, we are dealing on a day-to-day basis with all of the facets of the Internal Revenue Code trying to help these people.

You have had much testimony already substantiating why we feel that, you know, the Fenwick bill would be such a good one. That there is a tax on marriage, there is no question.

I also prepared some tables for you, but I did them very, very simply because I know you have very, very lengthy ones to look at that would only just serve to complicate matters. So, I tried to keep them as simple as I could. It serves to point out that if you do have the two working spouses with salaries just about even, they were allowed to file as two single individuals they would save dollars.

This is what is important to people. They are looking to save dollars. Then, as their income ratios would change, the money that they saved becomes less. So, if the law remains as it now stands, I feel that some of the honest taxpayers are going to be compelled to resort to the idea of living together or divorcing, as the one couple has just pointed out.

They will achieve their immediate goal, but I think that in doing it, these people will have another goal that they have not considered, a tax burden that would come from the event of estate planning which would be a real hassle for married couples who could choose to go this route. You see it gets into very careful tax planning that will be needed. One problem becomes another problem to them.

Our tax structure as it stands now just creates more and more resentment, particularly as our inflation continues to rise. Allowing married couples to have the benefit of the Fenwick tax saving option I think will serve to put more money back into our economy.

Even if these individuals wouldn't choose to invest, let's say if they only choose to build a better lifestyle for themselves, it really becomes an investment in our Government in the process.

I think, given a choice, individuals are going to choose the legal way to save dollars. The Fenwick proposal is going to serve to discourage tax evasion, if you will.

We do tax planning and estate planning on a day-to-day basis. We are trying to also provide education to tax individuals to try to bring them up to date as to what goes on in the tax world.

Again, we feel that all of the people that we are dealing with and the public in general are going to reject ideas that they would consider immoral. The stable family life, the high values that accompany it are very, very important certainly to our clients and I think to the world in general.

We are trying to encourage people to obey the law. When you have a problem that this is going to create for them, the tax burden of this sort, the marriage tax, it is going to encourage them to go the other way.

Divorcing, just living together, these ideas really are objectionable and certainly very impractical as I pointed out from some of the other problem areas that could be created.

So, we at the Tax Information Center very heartily feel that they should be able to have the choice of the tax table that would benefit them the greatest. I like the statement that was just made that it would be kind of a down payment on good intentions if they were allowed to make that option.

You must also go back and point out it is their money. They have to work at saving it. It is not something that everybody else can be expected to do for them. They have to put some effort into doing it themselves. Give them the option to decide which will benefit them the greatest.

I think that it can be done with just a few more lines on the 1040, certainly to start. The idea of revamping the whole system will be a great one ultimately, but this would be very cumbersome and time-consuming and wouldn't be done for quite a period. If you are trying to get something done immediately, that won't work.

I think the extra lines in the 1040 giving them the option to do this can be somewhat effective and comical in the process. So, we feel that the Fenwick bill should very definitely be supported and that the conscientious tax abiding citizens will want to support it in that way.

[The prepared statement follows:]

STATEMENT OF BARBARA SCHAER, VICE PRESIDENT, TAX INFORMATION CENTER

I'm Barbara Schaer. I'm Vice President of Tax Information Center and I heartily support the Fenwick proposal.

I. Tax Information Center is an agressive tax planning firm that utilizes the framewok of our laws to legally reduce the tax bite. The company is in its 15th year of service to clients from all over the United States. Their incomes range from $15,000 up to $350,000 yearly. Their common goal is to build a better financial world for themselves and their loved ones. Ninety percent of our clients adhere to established religions and, based on their moral values, reject the idea of "living in sin" in order to pay less taxes. We deal on a day-to-day basis with income tax problems, which gives us a good understanding of the Internal Revenue Code.

II. Much testimony has already been presented illustrating the problems of married working couples and their taxes. The attached chart which I have prepared will point out to you the differences as well. The greater benefit tax-wise will be if their spouses' salaries are just about even. As the income ratio changes the benefit in filing as two "single" people decreases. This is reflected in the chart.

III. If the law remains as it now stands, some honest taxpayers wil feel compelled to live together without benefit of marriage in order to avoid a discriminatory tax burden.

Furthermore, some couples will be aggressive enough to go the route of actually divorcing their mates in order to achieve the desired single status on Dec. 31. These couples will achieve their immediate goal, but they probably haven't considered the far graver consequences of the estate tax problem that could arise in the event of one of their deaths. Very careful tax planning would be critical in such a case, because they could lose the benefit of marital deduction for a surviving spouse. This I'm sure is not a consideration that has been brought out. (See attached examples 1, 2 and 3).

Our tax structure is creating more and more resentment, particularly as inflation continues to rise. Allowing married couples to have the benefit of the Fenwick tax saving option would serve to put more money back into our economy. Even if it doesn't get invested but gets used for personal living and better life style, it becomes an investment in the future of our government and national economy. Given a choice, individuals will choose the legal way to save dollars. Fenwick's proposal would discourage attempts at tax evasion.

IV. Tax Information Center does tax planning and estate planning on a day-to-day basis. We continually provide education for our clients through written material (books, monthly magazine, etc.), weekend seminars, training seminars and videotapes of qualified speakers on all aspects of tax saving ideas.

The clients of Tax Information Center reject ideas that they consider immoral. Stable family life and the high values that accompany it are important to our clients, as well as to most Americans.

All our clients are encouraged to obey the law.

The marriage tax will be a burden on them as many of our clients are both working spouses. For people who don't have the benefit of tax planning from a firm like Tax Information Center, there's a temptation to circumvent the existing marriage tax law—divorcing each year or living together or just not filing. These ideas are objectionable and impractical.

Tax Information Center advocates the "choice" of tax table that gives them the lowest tax. We wholeheartedly support the Fenwick proposal. With a few more lines, the existing 1040 forms and schedules can still be utilized, making the implementation of the "marriage tax" bill simple, economical, and effective.

No major changes in present reporting procudure would be necessary from a governmental standpoint.

The Fenwick proposal should be supported by all conscientious, law-abiding, moral individuals.

Depending on the know-how of the participating individuals, the tax loss could be kept at a minimum but most couples could find themselves facing serious losses of their hard-earned income and assets.

Example: Husband and wife both working decide to get divorced in November. Total assets—$350,000. Husband dies in an accident two weeks later. We will assume that all their assets have been placed in joint ownership. Federal law presumption: full value of jointly held property to be a part of federally taxable estate upon death.

Married:	
Total assets	$350,000
Marital deduction allowed to surviving spouse	−250,000
Balance	100,000
Unified credit equated in dollars no taxable estate	−161,000
Divorced:	
Jointly held	$350,000
Unified credit in dollars	−161,000
Federally taxable estate	189,000

If we take a third example and say: Divorced—owning one half of property as tenants in common.

$350,000 divided by 2 equals	$175,000
Unified credit in dollars	161,000
Taxable estate	14,000

But now we introduce probate as a dollar loss. Depending on conditions, 10 percent to 30 percent of that estate value could be lost to the "family structure."

Because of the complexity of our laws, the dollar loss gets even greater unless they have competent tax advisers.

Income	Joint tax	Two single return tax		Married separate returns	Potential savings
$10,000	$707	$6/4	$529		
		7/3	607		
		5/5	508	$712	$199
		7.5/2.5	697		
$15,000	1,640	7.5/7.5	1,394	1,646	246
		10/5	1,436		
		11/4	1,494		
		12/3	1,609		
		12.5/2.5	1,729		
$20,000	2,739	10/10	2,364	2,734	375
		15/5	2,606		
		12/8	2,401		
		17/3	2,913		
$30,000	5,601	15/15	4,704	5,578	897
		18/12	4,822		
		20/10	5,011		
		24/6	5,989		
$45,800	12,720	25.8/20	10,093	12,894	2,637
		34.1/11.7	11,305		
		41.5/4.3	13,536		
		42.6/3.2	13,997		
$60,000	19,678	30/30	15,924	19,678	3,754
		41.5/18.5	16,755		
		55.3/4.7	21,188		

Note: Single tax higher than if filing jointly.

The CHAIRMAN. Thank you very much for your fine testimony. Mr. Epstein?

STATEMENT OF ALAN J. EPSTEIN, SOMERVILLE, N.J.

Mr. EPSTEIN. Thank you, Mr. Chairman. Thank you for the opportunity to testify before this committee to voice our opinions on H.R. 3609.

I am a tax practioner. I am in practice in Somerville, N.J., which is Mrs. Fenwick's home district. I have a clientele of approximately 1,500. Had I not known the Drukers were not my clients, I would have thought the two people on my left were the typical client that comes into my office.

My presentation is going to be based on my day-to-day experiences with clients. Seventy-five percent of my clients are married filing joint returns. In more than half of the cases, both spouses are wage earners.

At the present, the two-wage-earner family is definitely being overtaxed because of the current laws that provide for taxation of the aggregate income, thereby driving the two-wage-earner family into the higher tax brackets. Many of the couples I see in my office come to the same conclusion after they hear how much tax they are paying.

It is usually the wife who says, "It didn't pay for me to work; it is all going to the Government." Athough this is not exactly correct, it does express the frustrations of the two-earner family who finds that with the added expenses incurred to be able to work, combined with a prohibitive tax rate, leaves the family with only a minimal increase in spendable income at the end of the year.

There are other reactions I find from my clients. One is the Drukers reaction, which is: "We are going to get a divorce." The third reaction, which I think is the most undermining to the American family today, is that of the honest taxpayer who comes in with all of his deductions honestly prepared and, says, they have checks for $900 in contributions and estimates he has about $100 in cash contribution for which there are no receipts.

When they find out how much tax they are paying, "well, maybe we gave $300 in cash for which we have no receipts." You are fostering a generation of tax cheats. With the statistics being that only 1.5 percent of the population is going to be audited, taxpayers figure, "Well I am in the 96 or 98 percent of the people who will not be audited and I will take my chances with the IRS."

I think forcing the honest taxpayer to consider cheating is as demeaning to the American family as having to get divorced. I believe that married couples should be given the option of either filing jointly on their aggregate income or as single on their individual incomes.

By offering the marrieds the option of filing jointly or as a single, one retains the current income splitting provision for the one-wage-earner family while not penalizing the two-wage-earner family.

Also, it might benefit some families that should be benefited. The Drukers are a two-wage-earner family at the present time. When Mrs. Druker gets far along in her pregnancy, she is going to have to stop working for some period of time and may opt not to work at all for the first few years. I believe this family should get a tax break and be allowed to pay taxes on the split income of the one-wage earner.

The rest of my presentation has to deal with the complexities of the tax return that this bill will engender because the marriage tax bill will tend to complicate the tax return. H.R. 3609 can, by its very nature, make the tax return so complicated that the average individual would be hard pressed to prepare his own return and make the cost of preparing tax returns for those who now seek professional help increase dramatically.

I am referring specifically to schedule A, where at the present time as I read the bill each of the two couples would have to list their own deductions separately. They would have to then combine or split the deductions for their dependents. Then, if they find out that married filing as singles doesn't work, they will have to go back and do the whole return over again jointly.

I would suggest to keep things as simple as possible, you would file your schedule A and—I am just taking this particular schedule as a prime example—as a joint return; getting total deductions at the end. Then, when the couple decided whether to file as single or joint, they would either subtract the zero bracket amount of $3,400 or the zero bracket amount of $4,600, whichever they happen to select.

I think this theory can be carried out through schedule D, where you would take the total capital gains and losses and then if it is a loss, raise the total loss allowable to $6,000 a year.

I believe that the current rate puts an unfair burden on the married couple who are both wage earners. And, H.R. 3609 will eliminate the equities of this prohibitive tax without imposing any additional taxes on any other segment of the taxpaying public.

[The prepared statement follows:]

STATEMENT OF ALAN J. EPSTEIN

Mr. Chairman, Members of the House Ways and Means Committee, thank you for allowing me to testify on H.R. 3609 known as "The Marriage Tax Bill". I wholeheartedly support this bill.

My name is Alan J. Epstein. I am a tax practitioner in Somerville, New Jersey with a clientele of about 1500. I have been in the tax preparation field for fourteen years and I am an enrolled agent having passed the IRS exam. Prior to 1978, I was in charge of a three county area for a major tax preparation firm who processed 15,000 returns per year, and presentation is based on this daily experience rather than general theory.

Seventy-five percent of my present clientele are married couples who normally file joint returns. In more than half of these cases, both spouses are wage earners. At present, the two-wage earner family is being overtaxed becaused the current laws provide for the taxation of the aggregate income, thereby driving the two-wage earner family into the higher tax bracket. Many of the couples I see in my office come to the same conclusion after they find out how much tax they are paying. It is usually the wife who says "it didn't pay for me to work, it's all going to the government". Although this comment is not exactly accurate, it does express the frustrations of the two-wage earner family who finds that the added expenses incurred to be able to work, combined with a prohibitive tax rate, leaves the family with only a minimal increase in spendable income. The "tax on marriage", which now penalizes married couples when both parties work, should be eliminated. Married couples should be given the option of either filing jointly on their aggregate income or as single on their individual income. By offering marrieds the option of married filing jointly or as single, one retains the current income splitting provision for the one-wage earner family while not penalizing the two-wage earner family.

For the past four years, the Internal Revenue Service has tried to simplify the tax forms. I support the IRS current effort. H.R. 3609 will, by its very nature, tend to complicate the preparation of tax returns. Every effort should be made to keep the tax forms and procedures as simple as possible. Toward that end, the following should be considered:

SCHEDULE A, ITEMIZED DEDUCTIONS

The simplest method of filing Schedule A would be to list all deductions jointly as is the current procedure. When the total itemized deductions are determined, the married couple filing jointly would subtract the joint ZBA ($3,400.) and the married couple filing as singles would subtract twice the single ZBA (a total of $4,600.). Any excess itemized deductions would then be split between the two incomes. This would eliminate the necessity for the couple to identify those items that are individually or jointly held.

Similar treatment should be given to Schedules B, D, & F, Rental Properties and Sale of Business Assets, etc., with the gain or loss split evenly between the two filers at the end of the form. In the case of Capital Gains and Losses, the maximum loss deduction should be raised to $3,000. for each filer.

Other areas that need to be considered are the taxability of unemployment compensation, the method of calculating the Earned Income Credit, the allocation of dependents exemptions and the procedure for the calculation of individual taxes using Income Averaging. The computation of base year incomes of married couples who had filed jointly and are now electing to file as single will need some consideration.

The CHAIRMAN. Thank you.

Mr. Taylor.

STATEMENT OF EDWIN T. TAYLOR, NORTH ATTLEBORO, MASS.

Mr. TAYLOR. Gentlemen, my name is Edwin Taylor. I am an accountant and tax practitioner from North Attleboro, Mass., a small town on the Rhode Island line. The average income of my clients ranges from $10,000 to $50,000 per year and they neither understand nor care about the technicalities of the law. What they do care about is that the present tax laws penalize and discriminate against the married taxpayer; and they want those laws changed.

I am here today to present to you typical examples of the "matrimony penalty" and the feelings of these taxpayers as opposed to discussing the fine points of the law.

Yesterday, clients of mine, John and Mary Smith got two surprises. She found out she was pregnant which they were not expecting; and they were not getting the tax refund which they were expecting.

They are among the thousands of young marrieds who find out the hard way that their tax on a joint return is greater than as single people. In this case they paid $245 or 18 percent more in taxes than had they been single.

Mary plans on going back to work after the child is born. But, they will receive another surprise. Both just received promotions and Mary's company has promised her job will be waiting. However, with their increased income, their taxes on a joint return will now be approximately 18 percent to 22 percent greater than that of two single people with the same income. Added to the additional Federal tax, Mary will pay additional State tax, as unfortunately she lives in a State—Rhode Island—in which the State tax is predicated on the Federal tax. She will also pay social security taxes, child care, and all the other costs related to working. On payday Mary will have less than 50 cents on the dollar to show for her efforts.

Now that Mary is on her own, her mother went back to work last year to insure that she and Mary's father will be able to retire in 15 years. They have very few itemized deductitons, and so take the standard deduction. To their dismay, they found out that their tax on a joint return is $1,200 more than the combined tax on two single people with equal income. This $1,200 per year for the next 15 years will cost them approximately $18,000 plus a substantial amount of lost interest by the time they retire.

Gentlemen, there are thousands of married taxpayers who are being financially penalized because they are playing according to the rules. And, they don't like it. American ingenuity, as many people seem to think is not dead. And many of these people are thinking. Whether it be the quickie divorce with its tax benefits while still living together or some other means of reducing their taxable income, the return on their efforts could be substantial. Many people have done far more for far less. I do not judge the morality or legality of such actions. I do, however, recommend that you propose tax law changes that will equalize the tax treatment of all taxpayers.

Thank you.

The CHAIRMAN. Thank you, Mr. Taylor.

Mr. Epstein, you have, I think, analyzed the problem. If we go to separate returns, you become involved in all kinds of complexities on deciding about deductions, credits, and other subtleties. So, would you state for me again whether you favor optional filing?

Mr. EPSTEIN. Yes. By the way, I left out probably the most complicated area, the computation of base years' income for income averaging. If H.R. 3609 passes and you will be able to opt for single, the couple may then be involved with one person income averaging and the other one not and where they had been married for the past 5 years and filed joint returns, the computation of base year's income will be extremely complicated and under current regulations, unfair. Enough said.

I don't want to put the taxpaying public through this ordeal. I do wish to give the married couple the option of filing either jointly or singly, but I don't want to force them into having an advanced degree in mathematics in order to prepare their return.

The CHAIRMAN. Well, of course, in most of the tables we assume a split income. But, in virtually every situation where one earner earns considerably more than the other, there is a wide disparity. Are you saying that even though one spouse only earned $10,000 and the other $40,000 that you would still split the deductions?

Mr. EPSTEIN. There are a number of ways of doing that. We can split it evenly. We could follow the New York State method which allows all the excess deductions to be taken at the option of the taxpayers, in which case the entire amount would go against the larger income to lower the tax. Or if you want to it could be done on a proportional basis. I am not in favor of the proportional method because that just adds another calculation to the people's tax returns.

I think either splitting it evenly or allowing the couple to decide would be the most logical. From a tax revenue standpoint I think to split it evenly would help the Federal Government.

The CHAIRMAN. Well, I agree, except that it would bring in a hoard of people telling us how inequitable that would be. This situation points out how very complex this matter is, and that any solution, no matter how simple it appears, creates all kinds of complexities in deciding the issue of itemized deductions.

Mr. EPSTEIN. I do not think you are going to be able to reach, as you said, the millennium through this. You are not going to satisfy all of the people. President Kennedy, I think it was, said that life is not fair.

Mr. CONABLE. No, President Carter said that.

The CHAIRMAN. I think that any way we do it will lead to other additional complexities and inequities and that is one of the problems.

Mr. CONABLE. I think Mrs. Druker got cut off at the pass here and has a statement of her own.

Mr. DRUKER. Yes, she has a prepared statement.

Mr. CONABLE. I think she should give her statement.

The CHAIRMAN. I called on her and I thought you said she did not want to respond.

Mr. CONABLE. I think it was a misunderstanding.

The CHAIRMAN. I am sorry. I said Mrs. Druker and somebody said no response. Do you want to testify, Mrs. Druker?

Mr. CONABLE. I understand she has an interesting statement.

The CHAIRMAN. Let's hear from you, please.

Mr. CONABLE. It is not necessarily the same as your husband's.

STATEMENT OF JOAN DRUKER, NEW YORK, N.Y.

Mrs. DRUKER. I am appearing today in an individual capacity as a taxpayer aggrieved by what is now popularly known as the "tax on marriage." As a working married woman, assistant programing officer of the Morgan Guaranty Trust Co., I feel particularly aggrieved by the application of this statute in that it costs me large sums of money each year due to anachronistic views of the woman's rule in marriage and family life.

The Supreme Court last summer, June 25, 1979, struck down HEW's "Aid to Families with Dependent Children/Unemployed Fathers" on grounds similar to that upon which the marriage tax is based. Justice Blackman, in writing the majority opinion, observed that Congress had apparently acted "with an image of the 'traditional family' in mind" and "simply assumed that the father would be the family breadwinner, and that the mother's employment role, if any, would be secondary."

Such an assumption, the Justice correctly noted, is "apart of the baggage of sexual stereotypes that presumes the father has the primary responsibility to provide a home and its essentials, while the mother is the center of the home and family life."

Today I need not reiterate the changed role of the modern working married woman—changed, that is, in every way save Federal tax treatment. I am allowed no deductions for commuting or work clothing. Nor when I have my child this summer will I be allowed to deduct the $7,500 per annum expenses of child care which I will incur upon my return to work. The logic of having the marriage penalty subtracted from my remaining income completely escapes me.

While I work largely out of desire and in spite of the fact that after taxes and expenses I am able to contribute less than one-fourth of my salary to my family, I am not a typical case. This committee cannot be unaware that millions of women have been forced by current economic circumstances to reenter the job market. These women and their families are victims of a tax system that takes the largest bite out of their desperately needed income. It is more than inequitable.

Congress can no longer be blind to the economic realities. The modern overlay on the rule that two can live as cheaply as one is that they can only do it if they do not marry. The day of the single breadwinner family is over. The tax structure must be changed to reflect this.

[Copies of the following letters were sent to Chairman Ullman:]

NEW YORK, N.Y., *April 15, 1980.*

COMMISSIONER OF INTERNAL REVENUE SERVICE,
Washington, D.C.

DEAR SIR: After due consideration, my wife and I have decided that although we do not qualify under the existing tax laws, we are applying Table X (for single persons) in calculating the amount of income tax due and owing by us for the calendar year 1979.

Additionally, as is noted on the face of my Form 1040, I am claiming single status, although I wish to advise you that I am still married. The reason for this is that I feel most strongly that the present income tax structure unfairly discriminates against working married couples, and as such is violative of the due process clause of the Fifth Amendment to the United States Constitution.

In order that there can be no legitimate claim of fraud, I have attached a copy of this letter to my tax return. Moreover, I have referred to the letter on the face of my Form 1040.

I am presently litigating this matter in the United States Tax Court with reference to prior tax years, and in the event that I do not prevail, I shall pay taxes due plus interest.

Until now I have felt that this course is preferable to that of obtaining a divorce while continuing to live together so as to obtain single filing status.

After more than four years of asking why we should pay several thousand dollars more per year in taxes than if we lived together as a "single couple", my wife and I have never received an answer, let alone a rational answer. Truly the tax laws place a premium on form rather than on substance. I am confident that the Courts and/or Congress will agree with our position, and rectify this incredible inequity.

For reference purposes, my wife's social security number is 133–34–3382.

Very truly yours,

James O. Druker.

New York, N.Y., *April 15, 1980.*

Commissioner of Internal Revenue Service,
Washington, D.C.

Dear Sir: After due consideration, my husband and I have decided that although we do not qualify under the existing tax laws, we are applying Table X (for single persons) in calculating the amount of income tax due and owing by us for the calendar year 1979.

Additionally, as is noted on the face of my Form 1040, I am claiming single status, although I wish to advise you that I am still married. The reason for this is that I feel most strongly that the present income tax structure unfairly discriminates against working married couples, and as such is violative of the due process clause of the Fifth Amendment to the United States Constitution.

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For reference purposes, my husband's social security number is 267–60–5944.

Very truly yours,

Joan S. Druker.

The Chairman. Thank you very much. Mr. Conable.

Mr. Conable. Thank you also, Mrs. Druker.

If it makes any of you feel any better, I am married. My wife works, and I pay all of the income taxes for both of us. It is fun to be on the Ways and Means Committee.

Mr. Epstein, we do in New York accept the complications of permitting separate filings on a single form usually. What would you think of a proposal, which is not in legislation at this point but could be, to have married couples continue to file joint returns, break out the earnings of the lesser earning spouse in a separate column, add the single's zero bracket amount to those earnings and then compute the tax separately on those earnings.

All deductions and so forth could remain with the joint return. What would you think of that as a proposal? It would be very simple.

Mr. Epstein. You are saying that the person would be filing similar to a dependent who has unearned income at the present time?

Mr. Conable. Yes, you break out the lesser earning.

Mr. Epstein. Well, a dependent child whose unearned income is over $1,000 is in this category now. That is an interesting theory. I would have to sit down and do some calculations to see if it pays the married taxpayer.

Mr. **Conable.** Well, we do something similar in New York where we permit an allocation of the deductions to either taxpayer.

Mr. **Epstein.** Oh, I see what you are talking about. I think that the New York method with the one form with the splitting of the income is an excellent method.

Mr. **Conable.** Well, we can do that on the Federal level too.

Mr. **Epstein.** Yes, I think that is an excellent method.

Mr. **Conable.** It does give options as to where the deductions are allocated. You do require at least one personal exemption to go to the lesser earning member of the couple.

Ms. **Schaer.** Minnesota does that also.

Mr. **Conable.** I think you pointed out some of the consequences of making all of these decisions on a tax basis. We used to say of estate tax planning it was living foolishingly so you could die smart. And to base all of your decisions on tax consequences is not necessarily to maintain the proper balance and perspective on what you are doing.

I just wish to point out, and I do not care for any commentary on it, that there are legal and economic consequences if a couple decides to live together without marriage. I realize that that condition is on the upswing. I do not think it is entirely for tax reasons but the tax reasons may have some marginal impact on it just as some of the incentives we put in the tax law have some marginal impact on investment decisions.

There are consequences with regard to estate taxes, social security benefits, the kind of alimony that was involved in some recent spectacular cohabitation cases in Hollywood, the status of children born to a couple living in an informal marriage.

A few States still recognize common law marriages, including the District of Columbia, in which we are now, Pennsylvania and Texas. And that of course would frustrate efforts at avoiding tax consequences by cohabitation. I hesitate to point this out, but there are still some States that have laws against fornication. I suspect those States are not doing a lot of enforcing.

But I do not press this as an argument against change. I simply wish to point out that living foolishingly so that you can maximize your tax advantages is not always the best thing to do. I would like to say that as part of the record here not in argument but as simply in passing commentary.

Yes, did you want to say something?

Mr. **Epstein.** We have left out a rather large segment of the population that is involved in this marriage tax and that is the elderly in which one spouse of each couple has passed away and are now finding each other in later life. They are cohabitating because——

Mr. **Conable.** Yes, we had to change the social security laws for that reason. And we do things like that occasionally. We do not always achieve the millennium as I have been saying here before but we do take faltering steps in the direction of some of the realities of performance.

Mr. **Epstein.** The segment of the population that is constantly overlooked is that very one.

Mr. **Conable.** Yes, I think that is correct. Well, that is all. Thank you, Mr. Chairman.

The CHAIRMAN. You have been a very helpful panel. We appreciate your statements. Thank you very much.

Our final panel is Janine Coward, John Conners, Dorothy Shinder, and Lawrence Gale. Without objection, each of your statements will appear in the record in full, and we would be very happy to recognize and welcome all of you to the committee.

First Janine Coward, we would be very happy to hear you.

STATEMENT OF JANINE H. COWARD, WASHINGTON, D.C.

Ms. COWARD. My name is Janine Coward. I am an attorney and I am appearing as an individual. I was told originally that very few of the people who would be making statements would be talking about how the marriage tax affected them personally and I expected everybody to be giving projections, statistics, and so on.

I see that some few people have come forward and I know how very uncomfortable they are about talking about their personal lives before a committee of Congress no matter what the attendance is, because I am very uncomfortable.

The marriage tax has affected my life badly. I had postponed my marriage from December of 1978 to the beginning of 1980. I am contemplating getting a divorce by the end of this year.

There are always difficult adjustments in a marriage. And every time something comes up I think, oh, is this really worth so many thousands of dollars a year in additional taxes? And I am sure my husband thinks the same thing. And I am sure there are husbands and wives all over the country who go through that every day.

I know that Federal income tax is used as a very powerful instrument of public policy in areas external to the collection of revenue. I know that there have been comments that it should not be so used but I do not think anybody says that it is not.

A classic example is the mortgage interest deduction which has subsidized middle class home ownership. And therefore when I see that a law is affecting me in a particular way, the tax law, I wonder what is the public policy that Congress has, what is it that they want me to do? It is clear because of the dollars involved that Congress does not want me to be married and to work at the same time. So one of them has to go.

Now, should it be the marriage? Now, obviously if we just look at finances, the marriage should go. I like living with my husband. If I continue to do so without benefit of marriage I know that I join a lot of people who have made this decision. I am not comfortable with it. And if you talked to my parents, there is a very real social stigma connected with that.

So the alternative is: Does the job go? Now, I have had a very expensive education and it was financed mostly through work, scholarships, and loans. Now, those scholarships were made possible by tax deductible contributions to the schools by individuals.

All right, that meant that Congress wanted them to make those donations because they gave the tax benefit and, therefore, the scholarships must have been a worthy thing in the eyes of Congress. The loans were either Federal or State interest support loans so that the interest is low and the payments were deferred while I was still in school.

These also were part of a public policy of Congress. So I know Congress wanted me to get through college and wanted me to get through law school.

I know that there is a body of thought that says it is fine for a woman to be educated in college and stay at home and not pursue a career. I never heard that said at my undergraduate school and I have never heard it said about getting a legal education. There just is not that much you can do with it in the home.

So, I think the same public policy which wanted me to get that education also wanted me to pursue a career.

I was brought up very traditionaly. I believe in the work ethic, I believe in marriage and all the traditional values. And I do not understand, if marriage is still a good thing and work is still a good thing, why when you put them together somehow they are undesirable and to be discouraged.

I am not going to give up my career because of the tax laws. And I have never met a professional woman who would make that decision. Women who are not professionals often cannot afford to make that decision.

Therefore, I endorse H.R. 3609 which allows married couples the option of filing as if they were single. I do not think that any of the various or halfway alternatives, various deductions and adjustments and so on solve the problem because they are arbitrary and I think what they do is just make more complex the penalty which already exists.

I have been distressed by a couple of things that I have heard today and they have come from you, Congressman Ullman. You seem to be troubled by the fact that you do not have perfect knowledge going into changing the law if you are going to do it and there is even an implication that you wanted to wait for the census data, for which I mailed my form on Monday.

It is going to be a long time before that data is going to be digested. I do not think the 1970 census is totally digested yet. I do not think it is fair to make us wait.

And the other thing, it is one of those great catch 22's. The enormity of the inequity—the estimates are from $5 to $12 billion of extra tax money which is collected from people that are married and working—the enormity of the inequity seems to be the chief reason for not doing away with it.

It is so big we do not know where we are going to make it up. I keep hearing it is not completely feasible to shift it on to people who are single-earner families. And I have heard about your district where apparently that is much more of the norm than it is in the rest of the country.

I wonder why are they untouchable but it is politically possible to penalize me and the 38 million other people who are married and working? Why is it that it is OK politically to impose it on us? What is it about us that makes us acceptable victims?

Thank you.

[The prepared statement follows:]

STATEMENT OF JANINE H. COWARD, WASHINGTON, D.C.

My name is Janine H. Coward; I am an attorney, appearing as an individual; my address is 1800 Massachusetts Avenue, N.W., Washington, D.C. 20036; phone 202/785-5153.

I understand that while a large number of witnesses representing groups and themselves as individuals are making statements, not many will be talking about how the marriage tax penalty has affected them personally. I am quite willing to leave the presentation of statistics, studies, projections and such to others. I also understand the reluctance to discuss one's private life before a committee of Congress; I share it.

Nonetheless, this is how the marriage tax penalty has affected—and continues to affect—my life. It caused my marriage to be postponed from December 1978 to the beginning of 1980. It lurks behind every disagreement and inconvenience attendant upon married life, causing me, and I'm sure my husband, to ask: is this really worth another [illegible] thousand dollars a year in income tax?

The marriage tax penalty makes me contemplate divorce before the end of this calendar year. Although the tax forms inquire only as to my marital status as of December 31, I realize that the Internal Revenue Service takes a keen interest in my subsequent actions. Should I continue to live with my husband without remarrying him, the IRS will allow us to file as individuals. Should we choose not to "live in sin," but to remarry after the beginning of the next tax year, the IRS will consider us to be engaging in a sham transaction and will seek additional taxes for the previous year.

The federal tax law has been and is being used as an enormously powerful instrument to implement public policy external to the collection of revenue. The mortgage interest deduction which subsidizes middle-class home ownership is an example. Many arguments have been made to the effect that the tax code should not be used in this fashion, but no one claims that it is not so used.

I therefore wonder about the public policy embodied in the marriage tax penalty. What is it Congress wishes me to do?

Clearly, Congress does not wish me to be married and to work at the same time, or it wouldn't exact such a price for doing so. Which shall I give up, work or marriage?

If finances are the only consideration, obviously the marriage must go. I can keep my income, be taxed as an individual. But Congress says I must "live in sin" to do so. This seems to be a common response to the dilemma and its very familarity has removed much of the opprobrium connected with it. But anyone who thinks living in that fashion is without social stigma has not spoken with my parents.

Then, must the job go? I have paid for a very expensive college and law school education through work, scholarships and loans. I was brought up believing in the work ethic, but since that does somewhat beg the question here, I will turn to the two other sources. Those scholarships were made possible by tax-deductible donations—in keeping with federal public policy. The loans were low interest and guaranteed by state and federal government—also in keeping with federal public policy. It has been said that a college education is warranted for women who never leave their homes for a career. I never heard it said at my undergraduate school, Bryn Mawr. I never heard it said in connection with a legal education, at any school. So the public policy which supported my education also encouraged my pursuit of a career.

Like most Americans, I was taught the traditional values. Work and marriage were important parts of that tradition. Yet Congress, through the tax code, is attacking those values in a way which cannot be ignored. If work is still commendable and marriage is still honorable, how does their combination somehow transmute them into undesirables?

Congress' signals are confusing, but my response on this issue is unequivocal. I will not give up my hard-won career because of the tax laws. I've never met a woman lawyer who would, either. I suspect we share that attitude with every professional woman in this country. But it is wrong to impose a heavy and disproportionate tax burden on the exercise of the right to be married and to work.

I endorse H.R. 3609, which allows two-earner married couples the option of filing as if they were single. I do not believe that any of the various alternatives—extra deductions or credits—will solve the problem. They are arbitrary and thus inevitably unfair, and perpetuate in a more complicated form the penalty which must be abolished.

The CHAIRMAN. Thank you, Mr. Conners.

STATEMENT OF JOHN K. CONNERS, ESQ., ALBANY, N.Y.

Mr. CONNERS. My name is John Conners. I am an attorney from Albany, N.Y., and single. I apologize for not submitting a more complete prepared statement because of time constraints. And after hearing much of the testimony today, I will try to limit my comments to what I consider to be major points.

Just from my understanding of the tax law and from what I have heard and seen in the testimony today and the written materials, it is apparent to me that the progressive tax structure is inherently discriminatory. And the key issue is, if it is such, what taxpayer units or taxpayer persons do we want to favor under this form of system?

As a result of that I am in concurrence with this proposed bill 3609 that would favor permitting married persons to file separately and thereby alleviate the marriage tax burden.

I did have a couple of problems with the bill. My first question was that I would prefer that the bill even carry this one step further because I feel that it is not really a question of just marriage versus single, but I think it is a question of family versus other.

And I think that is the unit that should be favored under the Tax Code. And for this reason I would extend the bill and I would create additional exemptions for the family, including things such as expanded credits for child care, credits for excess social security payments by the second spouse working and other exemptions.

The bill itself too does not really resolve the problem completely since although it may relieve the marriage tax burden, it seems to shift that burden back on to the single wage earning family since they will, therefore, be taxed at a higher rate on their combined income, which will be that of one wage earner. If equal to the combined income of the two wage earners, the tax on the single wage earning family will be higher because they could not avail themselves of the separate tables here.

Another question that arises with respect to this bill involves the concept of community property, which I believe the bill has addressed, although not very deeply. There will be complications in the interaction between the tax law and local community property laws.

There will probably be items of income attributable to a nonworking spouse that will still slip through as community property income and will be entitled to some kind of separate tax treatment: things as were mentioned, such as unearned income.

And lastly there is a direct inconsistency between having the Federal income tax disregard the community property laws but having the Federal estate and gift tax laws integrate the community property laws with the total tax structure.

As a result, I submit to the committee that additional steps should be taken past this intermediate measure of permitting separate filing, measures such as enacting similar to the estate and gift tax laws a unified tax table which would permit a special marital exemption that would more or less equalize the differences between community property States and separate property States.

This exemption for marital status would have to be somewhat integrated with any income that the second spouse had earned in the form of an offset.

In addition an alternative arrangement to having a unified tax rate
schedule may be to possibly permit or to treat the marital relationshi
as a partnership or a contractual arrangement whereby the nonworking spouse is deemed to be more or less recognizing income for homemaking services rendered and the working spouse is deemed to b
taking an adjustment against his or her income for that income attributable to the nonworking spouse.

However, these are matters which seem to be more preferably relate
to local law consideration, and I do not know how far we want to pus
the Federal laws in this area.

In conclusion, I would just like to mention that I consider th
family unit as the vital social element. And if there is going to be
pure tax shelter it should be the family. Thank you.

[The prepared statement follows:]

Statement of John K. Conners, Esq., Albany, N.Y.

**My purpose for appearing today is to focus primarily on the disparate trea
ment of the single and married individual under the current tax law. Presentl
structured, the tax rates will favor a married couple when their combined incom
equals that of a single person, yet create a tax burden on the earning power o
two individuals who marry and pay taxes at rates applied to their combined, a
opposed to single, incomes.**

I. Can the tax law operate completely neutral?

A. Adoption of a unified income tax table:

**(1) Income splitting between spouses, e.g. New York; (2) The marita
relationship: recognition of a contractual or partnership relationship (on
wage earner).**

**(a) Realization of income by a homemaking spouse; (b) Deduction t
wage-earner for income attributable to other spouse.**

**II. If the law must differentiate between taxpayers, which individuals or unit
should be favored?**

A. Current treatment:

**(1) Tax benefit to individual wage-earner under the married filing jointl
tables; (2) Tax burden on dual wage-earners under the married filing jointl
tables; Encouragement of tax divorces, living in sin; (3) Recognition of th
family as a vital element of American society.**

B. Recommendations:

**1. Continue to recognize and favor the family as the predominant social un
through tax benefits:**

**(a) Allow married individuals the option of splitting income and filing o
single taxpayer tables**

(b) Increase personal exemption amounts to reflect true costs of suppo

**(c) Provide a credit against income taxes for Social Security taxes pa
by a family in excess of that assessed on a single wage-earner**

(d) Expand the child care credit

**Personal background: Tax Attorney, Albany, N.Y.; single, Age 26; my appea
ance before this committee is purely personal.**

The Chairman. Thank you. Ms. Shinder.

Ms. Shinder, we would be happy to hear you at this time.

STATEMENT OF DOROTHY SHINDER, SAN MATEO, CALIF.

Ms. Shinder. Mr. Chairman and Mr. Conable, forgive me. I had
blackout. I have multiple disabilities, and this is an example of one
them. I am now seriously ill.

My name is Dorothy Shinder. I have become an attorney in propri
persona, and a war single woman, never married and have multip
disabilities as the result of medical malpractice. As you may recall,
have appeared before you, and I started all of this as far back as 196

Our Government is being undermined and destroyed from within by the political subdivisions, the Housing and Urban Development Administration, the Veterans' Administration, the Social Security Administration, the Health Care Financing Administration as well as the Legal Services Corporation.

You, the Congress, under congressional laws, appropriated billions of dollars for certain programs but the aforementioned administering agencies have circumvented the congressional law—statutory law, and made their own rules and regulations and/or misinterpreted the law regarding older disabled citizens who are predominantly women, which appears to constitute a conspiracy of fraud.

One: Under Public Law 93-384, August 22, 1974, enacted, Section 8: Lower income housing assistance, attached is exhibit A,[1] which deals with a proper interpretation of said law regarding direct rent assistance payments to "owner of existing dwelling units"—one of which I am—as a return on overinvestment in government as a war single woman supporting myself and paying the highest rate of taxes while in actuality heading my own household.

I have noticed here in the pamphlet, that originally in 1951 Congress enacted this head of household rate out of concern for single taxpayers who must maintain a household for other individuals, that is, pay more than half the costs of a household. There was never any regard for those single individuals who maintained a complete household for themselves and paid the entire cost.

And these were primarily women, heading their own households, working on jobs, and paying the highest rate of tax all of those years.

What is at issue here, is in the notice which came to me and which pleasantly surprised me about a month ago, is a "unit" as a home, a household, regardless of the number of occupants; a married or "live-in couple" both working have two incomes, whereas a single person living alone has but the one income; yet the basic expense, the cost is the same.

These are predominantly older women. It was for this reason I protested my income tax in 1963 as head of household, living alone, and received a refund. Exhibit B is attached, which is the check and which made the headlines in the San Francisco Examiner on the front page in 1964. This was unheard of to receive a refund for such a purpose.

Naturally the IRS did call me in and I indicated to them I was not going to return it but would never cash it until we all were recognized as head of a household. And this is one of the reasons I am here.

Since 1967 when my employment was taken from me, I have not paid tax. I now want retroactive payments and my position recognized as head of household of my apartment home.

Two: The Veterans' Administration has failed to recognize a claim for increased benefits as a doubly qualified citizen in two categories, being over 65 as well as being disabled. Attached, exhibit C, goes into a little more detail. It is self-explanatory.

Public Law 92-603, October 30, 1972, Public Law 94-566, October 20, 1976, and January 2, 1976, are amendments to social security title XVI which recognized dual qualifications for a disabled as well as an over-65 individual, which is exhibit D, attached.

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[1] All exhibits have been retained in committee files.

Yet the Social Security Administration has failed to implement these amendments. So that I, as well as others in similar situations probably have been denied full benefit payments for Medi-Cal, SSI and chore services, and food stamps. Exhibit D, attached, is a briefing on what has transpired.

I would like to say now, that recently I have turned 65, and pow, I was literally hit between the eyes. I never realized there were so many people in the welfare and the social services political subdivisions who stretch out their tentacles to grab all of these people who have been working and paying taxes all of these years, and who, suddenly, simply because they reached 65, are reduced to the status of an illegal alien, a person who has never paid a penny of tax, an indigent, instead of receiving privileges and immunities under the Federal Constitution's 14th amendment for which they have already paid.

What these citizens should receive is a return on their investment or overinvestment in government. Wisely the Congress did legislate laws for this purpose as indicated and I briefed in these exhibits, but these said political subdivisions specialize in evasions and give the "run-around," and the laws are incorrectly interpreted, so that legislated payments are not given.

If it wasn't for the fact that I did become a lawyer in pro per I would never have known the difference, myself.

Four: The Health Care Financing Administration of the Department of Health, Education, and Welfare has also failed to recognize the dual qualifications of a citizen who is both disabled and over 65.

The Chairman. Can you conclude in just another minute?

Ms. Shinder. Oh, yes.

There should be additional benefits paid to them. In medicare there should be no deductibles for a disabled senior citizen, but there should be 100 percent immediate and complete coverage for all hospital, dentist, and medical expenses without premium increase under 14th amendment to Federal Constitution. A disabled senior citizen has more medical needs. Additional stress has been added by medical professions refusal as indicated in exhibit E, attached, so that I have additional bills for hospital, which I am bombarded with.

Today is the 3,130th day that I have been held hostage in the U.S. courts since attorneys have refused to represent me, except two who have inadequately represented me and committed legal malpractice and unethical behavior in my medical malpractice case, in addition to three cases in which the attorneys have resigned. Therefore, I have been forced to be my own attorney against my will and health. The stress created by this, which includes five false unlawful detainer actions and two evictions plus two other changes in my residence, have been instrumental in the increased deterioration of my body, and my several periods of hospitalization resulting from the medical malpractice.

Four: Public Law 93–355, July 25, 1974, enacted the Legal Services Corporation Act of 1974 for citizens, to provide equal access to the system of justice free from the influence of or use by it of political pressures. It was amended on or about 1976 to include fee generating cases if private sector attorneys refused assistance, which applies in this particular situation.

Said corporation office in San Francisco has repeatedly refused to assist me. The Washington office here, is also ineffective. Exhibit F contains examples of my efforts to obtain assistance, to which there have been no reply. My repeated phone calls have not been returned.

At the present time, I still have several outstanding legal matters which require immediate attention for which I am asking both legal and typing assistance. I am too ill to continue.

All exhibits mentioned and attached hereto are made a part hereof as though fully set forth herein. I would like to say also that I am seriously ill as a result of 7,500 rads of linear excelerator radiation which were unnecessarily directed at five areas of my body in 1958.

When I appeared before you the last time in 1972, I did not know the extent or how seriously ill I was. My illness has been progressive because when damaged cells exist—as a result of radiation—there must be no stress. The past 12 years have been a literal nightmare saturated with continual stressful situations. This unusual form of torture has been cruel and inhuman, and is still continuing in court proceedings.

It's as though that I have been experimented upon to show the effects of exceptional stress on damaged tissues and cells, which are now hardened calcified, part of which is granulamotous disease and sclerotic and aortic stenosis, among other effects.

I would like to thank you for the opportunity to present my testimony. I need your help. I am asking for a financial settlement for just compensation for all the pain, wrongs, injustice, and intentional infliction of emotional stress I have been subjected to. If this stress is not removed it could be fatal. I cannot do any more. What is left of my health is paramount. I want and deserve just compensation now. I have more than paid for it.

The CHAIRMAN. Thank you very much. Mr. Gale.

STATEMENT OF LAWRENCE R. GALE, ZANESVILLE, OHIO

Mr. GALE. Honorable Al Ullman, Democrat of Oregon, Chairman, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

Mr. Chairman, I am Lawrence R. Gale, a retired glass bottle worker of some 38 years and a member of the retiree branch No. 5 in Zanesville, Ohio.

We recognize and realize that economic conditions, nationally and internationally, are in a sorry and disordered state. Whose fault and responsibility that is we dare not conjecture, but we know governmental sources, congressional, executive, and judicial, are probably honestly trying to correct the situation.

I believe that H.R. 3609, relating to the comparative income tax treatment of married couples, single persons, and heads of households is a big step in the right direction.

As the voice of the common man and a retired American worker, I would like to state the tax on marriage affects about one quarter of all taxpayers. With the economic conditions in the state they are today, anything the Government can do to help should be realized.

I would like to state an example: A husband and wife with a $12,000 income equal, when claiming under the present married tax table, their joint $24,000 income would be taxed $3,770.

If they would be afforded the privilege of filing separately on a redesigned 1040 tax form having two columns instead of one, which is what H.R. 3609 recommends, they could report their income separately and still enjoy the benefits of joint income and deductions.

For example, their separate tax would be $1,597 each for a total of $3,194 instead of the $3,770 which would be a saving of $576.

I note there have been two or three oral statements made. I did have another illustration here and a remark I would like to make, Mr. Chairman, and it is very short and brief. I know of a couple living together that the man makes $20,000 a year and the woman makes $15,000. Their tax filed separated is $6,168. If they were married their income tax would cost them $1,171 more by filing a joint return.

I too was a tax practitioner during the time that my children were in high school and going to college. And I did bookkeeping and tax services. I noticed some of your other individuals that testified were too. And I know that the complex tax structure then and now should be changed to better fit some of the lower income tax individuals.

I would urge you as our representative in the U.S. Government to vote favorably for H.R. 3609.

I would like to thank the committee for giving me he opportunity to testify before you and sharing my views. Thank you very much.

The CHAIRMAN. Thank you, Mr. Gale.

Mr. Conners, you indicated your support for optional filing, but also very clearly pointed out some of the problems and complexities. Mr. Gale, you mentioned that Congress and the administration were trying to find some equitable remedies. I think that is true. It is not as simple as just being able to pass a law to correct all of the inequities, because when you correct one, you put an inequity on somebody else. And that is generally the case.

For instance, you could turn the situation around. You could have comparable families living side by side both having a total income of $40,000, one by dual earner and one by single. But, if you adopted the bill you recommend, Mr. Conners, you would be saying to the one where you had two earners that they could reduce their taxes but the other one could not.

Mr. CONNERS. Yes.

The CHAIRMAN. I think in your testimony you rightly said that when you correct one inequity, you probably move to establish another one. So, that is the difficulty.

I think on that note, we will terminate these hearings. It has been helpful. We have heard a lot of good witnesses. There is no question that the marriage penalty provision has to be dealt with and corrected, and we are dedicated to do that.

But there is no one simple answer. It is a very complex problem. If we cannot solve the whole problem, at least bear with us while we solve part of it. Eventually we will get to the ultimate solutions. Thank you very much.

The committee will stand adjourned subject to the call of the Chair.

[Whereupon, at 12:10 p.m., the hearing was adjourned.]

[The following was submitted for the record:]

CHEVY CHASE, MD., *March 27, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. MARTIN: I am writing in behalf of Bill H.R. 3609, sponsored by Millicent Fenwick, to eliminate the "tax on marriage."

As a happily-married person of 37-plus years, I am dismayed that young people (and others!) are discouraged from matrimony by the current income tax laws.

The time to eliminate this "tax" is long overdue.

Yours very truly,

LENELL G. AMMERMAN.

PAMONA, CALIF., *March 29, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means,
Longworth Office Building, Washington, D.C.

DEAR MR. MARTIN: The tax laws in the United States at the present time discriminate against married couples versus single taxpayers. This has created a situation where many couples find it is more beneficial to live together unmarried rather than marrying and paying a substantial amount of their income in additional taxes. For example, an unmarried couple each earning $20,000 per year will pay $2,850 less in federal income taxes for 1979 than a married couple with the same income.

It is wrong for couples who may prefer to be married to either have to get a divorce at the end of each year to save on their taxes by filing single, or for couples who may want to marry (rather than living together and filing as single taxpayers) to lose so much of their income to taxes. It is time for the federal government to stop subsidizing this.

We wholeheartedly support legislation to help eliminate these inequities in tax laws, and believe the tax laws in the United States must be changed to eliminate the present "living in sin" subsidy of our current tax laws. There should be no discrimination in our tax laws based on marital status.

The foundation of our society and country is the family. Any laws that encourage its destruction will certainly weaken the structure of the United States.

Sincerely,

DORIS L. ANDERSON, C.P.A.

STATEMENT OF HON. DOUGLAS APPLEGATE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Chairman, Members of the Committee, I appreciate having the opportunity to share with you my views on the issue of the "marriage tax."

As you may know, I am a co-sponsor of H.R. 3609 which proposes to eliminate the inequities against married couples in our tax system.

Under current law, if two workers decide to marry, and have nearly equal salaries, they will have to pay more taxes than they would if they remained single. This law also discourages individuals from marrying because, in the majority of cases, they will incur a larger income tax liability if both individuals continue to work after marriage.

This "marriage penalty" faces more than half of all married couples in the United States, because for the first time in American history, more than a half of all married women in America are employed outside the home.

The Internal Revenue Service estimates that nearly one-quarter of all taxpayers, roughly 38 million, may be affected by this tax on marriage.

In many instances, economic conditions required married women to go to work to supplement their husband's salaries. I believe it is grossly unfair to continue a system which penalizes those married couples in which both spouses are employed outside the home.

Nearly every weekend, when Congress is in session, I travel back to my home district to talk with constituents. Because of this I believe I am current on the feelings and opinions of my constitutents. We all know how much the value of the dollar has been eroded due to inflation and the voters in my district are not wealthy—they are simple, hard-working families, mostly coal miners, struggling to make ends meet in these hard times.

I know that the married women in my district who are working outside their home did not have the luxury of deciding whether or not they would like to work. They have to work in order to survive financially.

The legislation I have co-sponsored, along with 218 of my fellow Congressmen, would not create a situation of reverse discrimination, nor would it have any effect on single individuals' tax rates. Rather, it would allow married individuals the option of filing as if they were single. This way, a husband and wife can report their incomes separately on the same form and still enjoy the benefits of joint income and deductions.

This is not a new concept. Many states already use this type of system in filing state income taxes.

I believe it is appropriate for Congress to end this "marriage penalty" that it levied on working spouses and I hope the Committee will act positively and expeditiously on this piece of legislation.

Thank you, Mr. Chairman.

WASHINGTON, D.C., *March 15, 1980.*

JOHN M. MARTIN, Jr., Esq.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. MARTIN: I am writing to urge Congress to repeal one of the most despicable social policies in the nation, the Federal tax on marriage. I would like to commend the Committe on Ways and Means for bringing the tax to a hearing. This tax is both a disincentive to work and to being married for millions of two income families. You will hear of people who have refrained from marriage, deferred marriage, even divorced, to avoid the despised tax. I am including my article from the Cleveland Press and the Washington Star, which I would ask you to include in the record, especially the cartoon in the Press. The marriage tax is a symptom of the country's antifamily policy. The tax is cites figures on the disintegration of the American family over the past decade. The marriage tax is a symptom of the country's antifamily policy. The tax is huge; it amounts to a 20–25 percent surtax where the incomes of the husband and wife are equal.

H.R. 3609 eliminates the marriage tax by allowing married people to use Schedule X; this is the preferred approach. The Fisher/Gravel approach, providing for a deduction for part of the second income, fails on two accounts. First, if this bill were passed, the marriage tax would still exist, and I would continue to urge its repeal. Second, the bill provides a deduction in cases where there is no marriage tax penalty, hence providing a windfall to the taxpayer and unnecessary cost to the treasury. The more important objection is that this approach fails to solve the problem, so divorce and refraining from marriage continues to be a tax shelter strategy.

Once you reach the decision to eliminate the penalty, the objections to H.R. 3609 do not hold up. Figuring the tax twice is no different from what is done now for the Maximum Tax or Income Averaging computations. The costs to the treasury are significant, but far less than the treasury's inflation windfall.

The marriage tax is onerous, economically counterproductive, and socially disintegrating. H.R. 3609 should apply to 1980 taxes and the years thereafter.

Yours very truly,

LAURENCE J. AURBACH.

ALTOONA, PA., *April 1, 1980.*

JOHN A. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR SIR: I would like to add the support of the Bathgates to the H.R. 3609 which would eliminate the "tax on marriage."

All of us married people are affected by this Bill and I have discussed it with many other married people who are not as gung ho in writing to our representatives as I.

We fell threatened in this day and age with the taxes we must pay and we do it out of a sense of obligation. However, we do not feel we need any unfair taxation and our feelings are that this is just that.

Were I living closer, I would like to come to the hearing I understand will be held this month.

Although I am District secretary of the Pennsylvania Nurses, many of the nurses being married, I cannot write for all of them. In speaking to them, they all concur, but again they feel too "busy' 'to write their thoughts.

Again, I would like to see this Bill supported as I think the many, many married couples would like to do also.

Thank you for being interested in my report.

Sincerely,

VIVIEN BATHGATE, R.N.

STOCKTON, CALIF.

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: After 43 years of marriage, my wife and I think the marriage tax is stupid. Had it been in effect for the last 43 years, we would have thought it stupid all that time.

It is amazing to us how long it takes Congress to undo its obvious errors. Perhaps it is so busy making new ones.

One major suggestion: eliminating the tax on marriage should be done by changing the deductions, not by requiring us to file two IRS returns.

Yours very truly,

ALICE BEIGHLEY,
K. C. BEIGHLEY.

P.S.—Requiring the average citizen, who does not have a big typewriter or a Xerox machine easily available, to submit five copies of this indicates a certain impracticality or downright arrogance on the part of those who make the rules.

STATEMENT OF HON. CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Thank you for the opportunity to submit testimony before the House Committe on Ways and Means.

I have introduced for several Congresses, my bill H.R. 140, which would remove existing Internal Revenue Code inequities for married persons who are both employed.

When Congress reduced the tax rates for single persons back in 1969, it inadvertently penalized married couples by making them pay more in taxes than they would have paid had they remained single.

This tax is especially difficult for low-income families. With inflation, more families are finding that two incomes are necessary, yet the tax reduces the value of the second income. The situation is so serious that some married couples have divorced to avoid the tax, and more couples are choosing to live together without the benefit of marriage.

My bill would extend to all unmarried individuals the full tax benefits of income splitting now enjoyed by married individuals filing joint returns; and to remove rate inequities for married persons where both are employed.

I respectfully urge this distinguished committee's favorable consideration of this important legislation which would provide an option to income producing couples. My bill would provide a simple solution to a very serious inequity.

TRENTON, N.J., *April 7, 1980.*

Mr. JOHN M. MARTIN,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Bldg., Washington, D.C.

DEAR SIR: I wish to make my voice heard in the outcry against the "marriage tax", which I feel is an unfair and unnecessary burden on married couples. It is no secret to the government that the state of marriage in America, if strong, contributes to the security and moral prosperity of the entire nation. Unfortunately, married people have so many strikes against them now: inflation, unmanageably high interest rates on loans, the staggering cost of medical care, the unavailability and high cost of gasoline needed to go to work. The overall picture is grim. On top of all this, the marriage tax is inexcusable.

Please act against the marriage tax. Please support Millicent Fenwick's bill which would permit married couples to file as if they were single.

Please help to preserve marriage in this country.

Sincerely,

ROSEMARY M. BENSON.

OLYMPIA, WASH., *April 1, 1980.*

Mr. JOHN M. MARTIN,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Bldg., Washington, D.C.

DEAR MR. MARTIN: The tax laws in the United States at the present time discriminate against married couples versus single taxpayers. This has created a situation where many couples find it is more beneficial to live together unmarried rather than marrying and paying a substantial amount of their income in additional taxes. For example, an unmarried couple each earning $20,000 per year will pay $2,850 less in federal income taxes for 1979 than a married couple with the same income.

I wholeheartedly support legislation to help eliminate these inequities in tax laws, and believe the tax laws in the United States must be changed to eliminate the present "living in sin" subsidy of our current tax laws. There should be no discrimination in our tax laws based on marital status.

I urge you to support legislation that will end this inequity.

Sincerely,

CLAUDIA BIERMANN.

Letters similar to the above were also received from: (Mrs.) Donna R. Gallagher, CPA, Atlanta, Ga.; and Kathleen S. Luby, Cincinnati, Ohio.

PITTSBURGH, PA., *March 28, 1980.*

Mr. JOHN M. MARTIN,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Bldg., Washington, D.C.

DEAR SIR: It is my understanding that hearings will be held on April 2 and 3, 1980 in regard to H.R. 3609, a bill to eliminate the "tax on marriage". I urge that this bill be given every consideration.

For several years now Mrs. Boyer and I, along with countless other couples have been denied the right to compute tax rates as a single person would and therefore pay a much higher rate. There is something plainly unfair in such a method which favors the couple down the block which live together without benefit of being married.

Mrs. Boyer returned to teaching ten years ago to enable us to send our two daughters to college. Thus far their expenses have been paid without help from federal or state loan programs. Yet at this time in our lives when expenses are greatest we are unfairly taxed for being married, paying our own way and not expecting our government to support us. It would seem that being upstanding Americans who accept no help is no longer not only the American way but also more costly.

Last year we paid nearly $12,000.00 in federal income taxes on a combined salary of $50,000.00. When I further deduct the state and local taxes, real estate taxes, mortgage payments, utility costs and two tuition-room and board bills, the amount left for monthly expenses is minimal considering the salary level.

We feel as honest tax payers who take nothing from our government by way of social programs that we are truly being discriminated against. We have never objected to paying our fair-share but now must ask that the tax regulations undergo the necessary changes so that we do not suffer because we chose to remain married.

Respectfully,

DALE E. BOYER.

BRICK TOWN CHAPTER NO. 2577 OF THE
AMERICAN ASSOCIATION OF RETIRED PERSONS, INC.,
Brick Town, N.J., March 11, 1980.

Hon. AL ULLMAN,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN ULLMAN: I have been advised that hearings will be conducted on April 2 and 3 by the Committee on Ways and Means, relative to Congressional bills which will allow married couples to file income tax returns jointly or as single individuals on a tax parity with all single persons, thus abolishing the "marriage tax".

Our members are very much interested in this legislation which will mean a tax savings to many senior citizens who are hard pressed by the ever rising cost of living, and we would be most gratful to you if your committee will formulate a bill that will help reduce the tax burdens of senior citizens as well as other married couples.

Very truly yours,

JOSEPH KRASNER,
Legislative Chairman.

TRENTON, N.J., *April 8, 1980.*

Hon. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: My wife and I urge you to support the bill sponsored by Hon. Millicent Fenwick, which will be giving income tax relief to a husband and wife who file a joint income tax return.

Thank you.

STEPHEN P. BUDASSI.

RALEIGH, N.C., *March 31, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: My husband and I would like to go on record as supporting H.R. 3609, Representative Fenwick's bill to eliminate the "tax on marriage." We belong to no organized group opposing this unfair tax but speak only as concerned taxpayers that have been adversely affected as have millions of other married couples.

Please do all you can to allow us the option of filing as if we were single.

Cordially,

Mr. and Mrs. C. W. BURNETTE.

DETROIT, MICH., *March 31, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR COUNSEL: Please record my support for H.R. 3609, the bill to eliminate the "Marriage Tax."

That tax works out to about $2,000 in the case of my husband and myself, which, when coupled with the fact that the income averaging aspects of filing joint returns are of little or no benefit for two-worker families, is truly punitive.

Additionally, the social security tax which a working wife pays is of no account unless her retirement benefit is greater than her husband's benefit—in which case, her husband's social security taxes are of no benefit to her. No wonder we feel triply disadvantaged!

Sincerely,

MARY LOU CALLAHAN.

TRENTON, N.J., *March 31, 1980.*

Hon. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: The survival of the institution of marriage has from time immemorial been considered to be in the public interest. It has been the policy of every nation to encourage marriage providing, as it does, stability and foundation to the entire framework of civilization.

We find it, therefore, not only unfair but also uncomprehensible that a government established for the benefit of the people it serves, should allow the continuation of a policy which can only lead to the weakening of the marriage bond and to a diminished respect for and disinclination to enter into the institution of marriage.

We refer specifically to the "tax on marriage", as it now exists in the tax laws. Why should two-earner married couples pay a premium for maintaining the legitimate framework of our society? Those who work—and we do—and remain married, deserve medals—not tax penalties.

You can be assured that every married taxpayer in a two-income family is watching the progress of H.R. 3609 very carefully. We cannot urge too strongly that you actively support passage of this tax reform.

Sincerely,

MARY ANN CANNON.
(And 118 others).

RALEIGH, N.C., *March 31, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I am writing as a concerned taxpayer in support of HR 3609. I feel that the option to file jointly or separately should be allowed in the case of a two income family. The present law has had an adverse effect on our income, and I resent being penalized for being married a member of the working force.

I would welcome the opportunity to support this legislation in any way that might assist in its passage.

Sincerely,

SUE C. CARTER.

A letter identical to the above was received from Thomas L. Davis, Raleigh, N.C.

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: We would like to be on record in support of H.R. 3609. This bill represents a major effort to rectify a longstanding discrimination against working married couples. It is very unfair, in this time of inflationary pressures, to add an additional tax burden to married couples. The effect of this tax on marriage can only be negative. We therefore urge that the Committee adopt this bill as soon as possible.

BARRY CHALOFSKY
(And 7 others).

NEWTON SQUARE, PA., *April 1, 1980.*

To whom it may concern:

I wish to go on record as being in favor of the bill to eliminate the "tax on marriage." Please do all you can to pass H.R. 3609 as soon as possible.

CECILIA E. CLEMENT.

BORDENTOWN, N.J., *April 14, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: We are very interested in having the Marriage Tax Bill passed. We believe the present tax in unfair and discriminatory. The amount of allowable tax bonus should be equal for both single and married couples.

Mr. and Mrs. ROBERT COLE.

PLYMOUTH, CALIF., *March 31, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I have just received notice of hearings before the House Ways and Means Committee concerning H.R. 3609. I am Department Chairman and Teacher in Social Science and Foreign Languages at Jackson High School and my husband is Grants/CETA Administrator of Amador County. I am writing to you on behalf of both of us, as your decision in this matter will directly affect our personal life, and would appreciate your considering this letter as a written statement in strong support of this legislation.

Neither my husband nor I oppose paying Federal taxes. It is to the inequity of the current tax rate between single persons filing separately and married persons filing jointly that we object. This discrepancy is becoming crucial in the light of our legally limited salary increases, which bear no relation to the current inflation rate. Despite the impressive titles and equally impressive work load, one must remember that Amador is a small, rural county where high cost-of-living is combined with low pay.

Last year my husband and I were forced to pay not $600, but $700 more in Federal taxes merely because we had chosen to legalize our relationship by marriage. Yet, had we been single and living together, we would have actually received a refund!

This forced us to take out a loan, which at tax time this year, we are still repaying. Only a bad business loss this year allowed us to literally survive financially this year. Next year, quite frankly, we will not be able to pay our taxes as legally mandated under the current system. Consequently, we are seriously contemplating a divorce.

After over ten years of increasing happiness, this action pleases neither of us, but we see no alternative. The moral implications are obvious: the current tax structure openly fosters a breakdown of the traditional family structure. The crowning irony is that, as I teach Spanish, my half of the planned Mexican divorce would, in addition, be tax deductible.

Unfortunately, our plight is not atypical. We are not the only couple we know faced with the same problem and considering the same solution. This currently inequity in Federal tax structure can be corrected by a speedy passage of H.R. 3609. Both my husband and I urge you to pass this sorely-needed legislation as quickly as possible.

Sincerely,

(Mrs.) J. F. CROWDER.

EAST WINDSOR, N.J., *April 5, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: We are an unmarried couple who have been living together for just about a year. We are planning to get married toward the end of next month, but before we made that decision, we sat down and calculated what marriage would cost us since both of us work full time. We estimated that we will have to pay an amount in excess of $300 extra for taxes after we are married. If the "marriage tax" had turned out to be very much more, we might well have considered it a sufficient reason not to get married.

It strikes us that it is paradoxical, in a country where the virtues of marriage and family life are extolled by the President and many other of our leading politicians, that the tax laws are written in such a way as to provide a disincentive for many working couples to enter the bonds of matrimony.

We are therefore writing to urge the Committee's approval of the bill (H.R. 3609) introduced by Rep. Millicent Fenwick that will give married couples the option of filing single tax returns.

Whatever revenue would be lost to the government if this measure were passed might well be made up by setting aside an equivalent amount from the revenues gained by means of the recently passed windfall profits tax on oil.

However the shortfall in revenue might be recovered from other sources, it is clear that the time for correcting this inequity in the tax system is long overdue.

Yours sincerely,

CATHERINE M. DAMMEYER.
SANFORD G. THATCHER.

STANHOPE, N.J., *April 1, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN; I would like to go on record as in favor of eliminating the unfair tax on two-earner married couples. It is only fair that we be allowed to file tax as single and thus pay a more realistic amount.

Very truly yours,

TOM DEBLON.

Letters identical to the above were received from Helen Kehayes, Millburn, N.J.; Brian Richardson, Summit, N.J.; and Carolyn S. Richardson, Summit, N.J.

TRENTON, N.J., *March 29, 1980.*

JOHN M. MARTIN, Jr.
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR SIR: I am informed that the Committee on Ways and Means will conduct public hearings April 2 and April 3, 1980 on legislative proposals relating to the comparative income tax treatment of married couples, single persons and heads of household. Inasmuch as time does not allow me to request the opportunity to present oral testimony before the Committee at these scheduled hearings, I am availing myself of the invitation of the Chairman to submit a written detailed statement for the Committee's review, and for inclusion in the printed record of the hearings.

My name, address, and firm affiliation is shown above hereon. Although I do not practice as such, I am also the holder of a certificate to practice as Certified Public Accountant and have held that designation for 33 years. For several years prior to attending law school, I was associated with the office of Internal Revenue Agent in charge, Newark, New Jersey. As a counsellor at law of New Jersey, my practice involves many various aspects of tax and financial planning. I am also at present privileged to be serving as the President of the New Jersey Association of Attorney-CPAs, Inc. This letter is written on my behalf, and not on behalf of any organization or any client.

Under present law, a husband and wife who both have taxable income generally pay more Federal income tax than they would if they were unmarried. It has been estimated by the Internal Revenue Service that more than one-half of all taxpayers are married, and that at least one-half of all married couples report income from each spouse. This has the result that 25 percent of all U.S. taxpayers, or about 38,000,000 Americans, may well be affected by this discriminatory "tax on marriage."

H.R. 3609 provides a simple solution by allowing married couples the option of filing as if they were unmarried. Either spouse may claim deductions for dependents, the child care tax credit, etc., but these items may only be claimed once. The remedy envisaged by H.R. 3609 will create no hardship for any other taxpayer, as it will only benefit and affect married individuals.

The Federal income taxes now imposed puts discrimination on a married couple where the income of one spouse exceeds 20 percent of the income of the other spouse. The closer that the income of one spouse approaches equality with that of the other, the larger the discriminatory tax on the married couple. For example, if each spouse earns $25,000 per year, the couple pays $2,674 greater Federal income taxes than the couple would if they were single. This discriminatory tax is particularly burdensome for the lower income families. If, for example, the husband and wife each earns $3,750, the couple pays a "tax on marriage" of $168, which is almost one-third more than the couple would pay if they were living together without being married.

Congresswoman Fenwick has correctly stated that the applicable provisions of the Internal Revenue Code should be changed to reflect the changed social conditions in our Country. It has been reported that 30 years ago, less than 18 percent of married women, who were living together with their husbands, were gainfully employed. That percentage had increased to almost 50 percent by 1977. With the onset of unbridled inflation, an increasing number of couples are finding that it is necessary for both the husband and the wife to work in order to make ends meet.

That being the case, under the present posture of the Internal Revenue Code, if the wife finds it necessary to go to work in order to help her husband support themselves and their family, the wife's first dollar of income will be subject to Federal income tax at the same rate as the last earned (highest taxed) dollar earned by the husband. Thus, in effect, the wife's income will be subject to Federal income taxes at a much higher rate. Combine this set of circumstances with new expenses for the caring of children, for housekeeping services, and for commuting and other work-related expenses, and a very real work disincentive is created.

The Internal Revenue Code at present is designed so that all married couples with the same total income pay the same Federal income tax. However, the expenses of the single earner married couple may be quite different from that of the couple in which the husband and wife both work. For example, the taxable income of the single earner married couple does not include the real value of the housekeeping service of the wife.

There are other social changes which reinforce the need for a change. The divorce rate in the United States has doubled in the last 10 years. The number of households which were shared by unrelated and unmarried individuals of the opposite gender also doubled in the last decade, increasing, according to latest statistics, by as much as 500 percent for those under age 45. The discriminatory "tax on marriage" encourages this undesirable trend.

H.R. 3609 embodies a simple change in the law which would support the marriage ethic in the United States, and at the same time end this most glaring inequity in our present Federal income tax system. Mrs. Fenwick introduced comparable legislation in 1975; and in the most recent preceding Congress, almost 75 members of the House of Representatives co-sponsored a bill similar to H.R. 3609. A comparable bill has been introduced into the Senate by Senator Mathias with 6 co-sponsors.

At the present time, the District of Columbia and 11 of our sister States permit, or require, married taxpayers to file separate Returns as unmarried individuals. By providing this option to the husband and wife who both have income, H.R. 3609 provides a simple straightforward solution to eliminate this very grievous inequity.

I am writing to urge the support for H.R. 3609 to eliminate the discriminatory "tax on marriage."

Respectfully,

MORTON DEITZ.

MOUNT HOLLEY, N.J., *April 4, 1980.*

DEAR MR. MARTIN: I am writing in strong support of Congresswoman Millicent Fenwick's bill regarding the "tax on marriage."

My husband and I both work. While I believe in the federal income tax system as a means of supporting our government, I cannot condone the aspect of it which punishes me (and millions of other working Americans) just because I am married.

I make a certain amount of money. If I were single, I would pay less tax than I do as a married person on that same income. It doesn't seem fair, does it?

Mrs. Fenwick's bill will correct this error. Please support it.

Thank you.

Sincerely,

ROBERTA DICERBO.

HOPEWELL JUNCTION, N.Y., *March 31, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Bldg., Washington, D.C.

DEAR SIR: This is to inform you, and whomsoever else necessary, that I am seriously affected by the "Marriage Tax" as it now stands, and I strongly urge and favor the passage of Representative Fenwick's bill H.R. 3609, that would eliminate this unfair tax.

As it now stands, my wife and I, who have been married for 29 years, must pay over $1,000 more in withholding taxes than our unmarried counterparts, making the same combined salary and "living in sin."

Very truly yours,

JOSEPH E. DOUGHTY.

NEW PROVIDENCE, N.J

JOHN M MARTIN, JR.
Chief Counsel, Committee on Ways and Means, U.S. House of Representative
Longworth House Office Building, Washington, D.C.

DEAR SIRS: I wish to speak strongly in favor of Millicent Fenwick's bill t
repeal the marriage tax: HR 3000.

By repealing the marriage tax, Congress will stop encouraging people to "liv
in sin." The marriage tax is costing my wife and me $4,000 per year in additiona
taxes.

Sincerely,

DR. ALFRED E. DUNLOP.

WILMINGTON, DEL., *March 31, 1980.*

MR. JOHN M. MARTIN, JR.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representative
Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: As a mother, I should like to file this written statemen for the record of the hearings on the bill H.R. 3000 concerning the "tax on marriage."

Everyone decries the breakdown of moral laws or principles in the Unite States, but I say it squarely at the doorstep of the United States Congress! On of my sons voluntarily stayed active in the church until after he went away t the University. He now has a good job and by living with his girl friend (wh also has a good job) without the benefit of marriage, they saved thousands o dollars in taxes each year. This situation tears me up.

How can you ignore the fact that over 50 percent of women in this country ar working outside the home? Obeying any law that does not injure other people is a voluntary covenant between the United States and each consenting citizen If the inequity is so great that the individual no longer trusts the justice of th government, something has to give. And in this case, it is the morals of th country. People are going underground because of the inequity of the tax structure. Can the United States afford to let this happen? Which is more importan money for the government or morality? This is the question that you must as yourself. Times have changed and you must change with it in order to keep th same moral and ethical standards.

Sincerely,

MRS. ELEANOR PEARL DUNLOP

BOUND BROOK, N.J., *April 9, 1980.*

JOHN M. MARTIN, JR.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR DR. MARTIN: I am writing in support of Congresswoman Millicent Fenwick's bill concerning revamping the "marriage tax" portion of Federal income tax legislation.

It has been the Congressional practice not to legislate morality in the past, yet this is what I believe the "marriage tax" does in effect if not in intent. It encourages those persons who wish to make the deep commitment to each other that marriage entails to reconsider their decision in light of a purely economic situation. In this country today, with galloping inflation, that can be a weighty consideration indeed.

It is time for Congress to recognize that an inequality exists in our present income tax laws, and to take immediate steps to correct that inequality. For in the final analysis, isn't the ideal of "equality for all" what this nation stands for?

I have always found Mrs. Fenwick to be in the forefront of progressive, humanistic legislation; I am not surprised, therefore, that she has sponsored this bill as well. I look forward to reading about the successful passage of her bill in the near future.

Sincerely yours,

KATHLEEN A. DUNN

RANSOMVILLE, N.Y., *March 12, 1980.*

MR. DAN ROSTENKOWSKI,
Chairman, Subcommittee on Select Revenue Measures, House Ways and Means Committee, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN ROSTENKOWSKI: Thank you for your letter of March 7 in which you informed me that the Committee on Ways and Means will conduct public hearings on April 2 and 3 during which the "tax on marriage" will be considered.

I am sure that the Congress will look at the total tax burden on two-earner families. In addition to the "tax on marriage" (marriage penalty) in the federal income tax, two-earner families will continue to bear an exceptionally heavy burden in social security taxes. As presently structured, the tax system levies taxes in some cases on individuals as individuals and in other cases on "units," e.g. family unit. When taxes are levied on two-earner family units, they must pay one extra social security tax with very little prospect of additional benefits at the time of retirement. Thus, in 1979 I estimate that two-earner families paid approximately $15 billion or more (the theoretical maximum yield from this social security "tax on marriage approaches $26 billion) over the amount imposed if they had been paying either as single individuals or as the working spouse in a single-earner family. Moreover, the social security tax is scheduled to continue to rise dramatically in coming years. FICA taxes are after FY 1981 to be indexed to reflect inflation whereas the incomes of many workers and income taxes are not indexed.

Of course, this extra second-earner contribution comes out of "take-home" pay. As a Congressman, I am sure that you realize the hostility to the social security system manifested by many working people. With the majority of families being two-earner families and the benefits not increasing in proportion to their extra contributions, they bitterly resent the increased FICA tax. To use a 1980 illustration on the impact of the social security "tax on marriage," if the single earner or the working spouse in a single-earner family pays more than $1,587.67 in social security taxes (i.e. 6.13 percent on the first $25,900 in earnings), that person receives a tax credit and can reduce his income tax payments by one dollar for every dollar of excess FICA payments. The two-earner may pay up to $3,175.34 in FICA taxes with no credit for the excess beyond $1,587.67 towards meeting income tax payments. Yet only a small percentage of two-earner families will receive under the present formula any more in benefits than the one-earner family, but they pay much more in FICA taxes.

There are ways to mitigate hostility towards the social security system. The two-earner tax "unit" could be given a tax credit for any FICA payments in excess of the amount due on the salary of the spouse with the larger income. Thus, the two-earner family would be made equal to the single-earner family and single taxpayers. Taxes would then generally be proportional to the benefits to be received in the long term. While social security revenues would not be reduced at a time when the system needs every dollar to keep solvent, the two-earner family would have its income tax liability reduced and enjoy greater equity in its tax burden. A less expensive alternative would be to give a tax deduction for such excess FICA payments on the same basis as state income taxes or real estate taxes. Unless Congress acts to correct this inequity, working spouses will find this particular "marriage penalty" accelerating and thus contribute to the "tax revolt" against the social security system.

When one considers the "tax on marriage" in both the income tax system and the social security tax system, the two-earner family by having to pay 6.13 percent on all of their earnings will pay federal taxes at the same marginal rate in 1981 on net taxable income up to $60,000 as individuals without family responsibilities. By marginal rate I refer to the percentage paid on the last $100.00 of taxable income, i.e. the federal income tax rate plus the social security rate. Two-earner families also have to pay a higher proportion of the income for the government resulting from high inflation rates. If both earners in a two-earner family receive a cost-of-living raise in this period of rapid double-digit inflation, they of course will pay a higher percentage of the raises in taxes on their tax unit's income than will the single earner or single-earner family unit.

Another factor bearing on the two-earner family is the inadequacy of the employers' tax withholding tables resulting from the law's failure to recognize that in some respects the two-earner tax unit deserves different treatment. Withholding is done on the presumption that the workers in a one-earner family unless the employer and employee carefully study the fine-print of the W-4. At the end o the year, too little is often withheld from the two-earners' incomes and they hav to come up with a substantial sum in cash. If Congress insists on the "tax o marriage" remaining in force, it should insist that the form employees fill ou when they are hired include the question: "Is your spouse employed outside th home?" If the answer is yes, then the employer by a new schedule should b required to withhold a sum approximately 12 percent higher than would b withheld from the wages of single earners. That surtax would represent what i needed to pay the "tax on marriage" which runs consistently around 25 percen if the spouses have approximately equal pay than on single individuals.

With the two-earner family being the norm in America today, it is no wonde that there is a "tax revolt." The two-earner family is being subjected to a disproportionate share of the tax increases and in the context of double-digit inflation this is coming to mean a reduction of living standards for their families.

I shall appreciate receiving a copy of the hearings when they are printed. While I realize the institution of marriage has become a great source of revenue for the federal government, I do hope that Congress recognizes that strong families are basic to the social welfare of the nation.

Yours very truly,

JAMES A. DURAN, Jr.

STATEMENT OF KENNETH DZUGAN, ST. PAUL, MINN.

My wife and I both have professional careers. For 1979, the "marriage penalty" will cost us an additional $3,000 in federal income taxes. I strongly support H.R. 3609 which will give my wife and me the choice of fing a joint return or filing as single persons.

I have heard several criticisms of this approach and I wish to offer some ways you may consider dealing with the criticisms. The first criticism is that deciding how to split joint income and deductions will be complicated. In Minnesota couples file on a per income basis and we simply take equal shares of joint income. In Minnesota couples may choose to split joint deductions in any manner they choose. Normally, deductions are taken from the income with the highest marginal tax rate. If deductions remain when the two incomes are equal, then the remaining deductions are split equally.

A second criticism is that this bill would put couples through the additional burden of figuring out their taxes twice to see which way they were better off. I have several responses. First, when compared with the job of gathering together all of the tax information, the added burden of figuring out taxes twice is quite modest. Second, I would be more than willing to do additional work to save thousands of dollars. Third, many couples will be so clearly better off one way or the other, that they will need to do only one calculation. Finally, Americans already live successfully with several other choices such as whether or not they should itemize deductions and whether or not to income average.

In conclusion, I strongly support H.R. 3609.

JOHN M. MARTIN, Jr., CHICAGO HEIGHTS, ILL.
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I urge you to eliminate the unfair "tax on marriage," that tax that so penalizes and discriminates against women in our country. Isn't this tax really illegal? After all, it unfairly jeopardizes women's equal opportunity in the market place by "handicapping" their earning power.

Have you stopped to consider how many couples do not get married and just live together to avoid this unfair tax? In essence it is contributing to the breakdown of the home and family in this country, along with the evil of inflation which we must contend with.

Women earn on the average $8,000 a year, 56 percent of the earning power which men enjoy. How many husbands prevent their wives from going to work because "you would put me in a higher income bracket." This is antithetical to the initiative and drive that got our country started. We now see forces in our society that penalize people for wanting to work and get ahead.

I strongly urge you to do all in your power to repeal this most unfair tax. Allow women the same opportunity in the marketplace which you men have enjoyed for centuries.

Thank you most sincerely.

SUZANNE EOVALDI.

STATEMENT OF HON. DANTE B. FASCELL, A REPRESENTATIVE FROM THE STATE OF FLORIDA

Mr. Chairman, and members of the Committee, I am pleased to have this opportunity to testify in support of H.R. 3609, legislation to correct the inequitable tax placed on married, working couples.

The present tax rate for a married couple where both spouses work is substantially higher than for two single, working persons. This has had the effect of financially penalizing those individuals who opt for marriage. Recently, there has been a dramatic increase in the number of women who have joined the labor force and, persently, well over 50 percent of married women are working outside the home. When the tax laws—as they relate to married vs. single persons—were written, there was generally a single wage earner per family. Increasing financial necessity, as well as a new awareness of the changing roles of women have precipitated the ever-growing surge of women into the work force and a rise in the number of two-wage earner families. It is time that Congress should recognize and adapt to changing social norms, and allow married, working couples the same tax rate as unmarried, working individuals

In addition to being financially burdensome and discriminatory, current tax policy provides a great disincentive to marriage. During this period of soaring inflation and exorbitant prices, all Americans are seeking ways to cut expenses. The financial penalties which accompany the institution of marriage are adding increasingly to the "unmarried couples households" statistic, now up 117 percent since 1970, according to the Bureau of the Census. Perhaps an extreme, but nonetheless poignant example, is the couple who was married and divorced five or six times, at strategic times of the year, just to avoid the higher marriage tax. This couple's action is indeed evidence of the need for changes in the tax laws as they relate to married couples.

Not only does current tax laws discriminate against married couples, but it can have the effect of discouraging one spouse from working at all. At present, the tax liability incurred by the second wage earner is greater than that of the first wage earner. Since traditionally men have been the proverbial breadwinners, and the salary of the working wife has been considered the second income, the higher tax rate placed on the wife's income serves to discourage her from working. During this period of heightened perception of equal rights of men and women, I believe we should be doing all we can to allow choices for women who want to work.

Over 200 of our colleagues have joined in sponsoring H.R. 3609 which would end this discriminatory marriage tax. This issue has wide, bi-partisan support and is an issue that would impact positively on over 35 million Americans. I urge the Committee to act favorably and expeditiously on this important and needed legislation.

STATEMENT OF PROF. STUART J. FILLER, UNIVERSITY OF BRIDGEPORT SCHOOL OF LAW

INTRODUCTION

My name is Stuart J. Filler, and I reside at Bradley Lane, Sandy Hook, Connecticut 06482. Presently, I am a Professor of Law and Director of Clinical Programs at the University of Bridgeport School of Law, 600 University Avenue, Bridgeport, Connecticut 06602. In addition, I am the faculty supervisor of the Law School's Tax Clinic. Prior to joining the faculty at the University of Bridgeport School of Law, I was a member of the faculty at Hofstra University School of Law for over six years. Prior to joining the faculty at Hofstra University School of Law, I was employed by the Legislative and Regulations Division of the Office of Chief Counsel of the Internal Revenue Service in Washington, D.C. I received B.B.A. and M.B.A. degrees from the University of Michigan and a J.D. degree from New York University School of Law.

I appear before this Committee in my individual capacity. Nothing I will say is intended to represent the view of the University of Bridgeport. Furthermore, I am not appearing at the request of any client, nor do I presently represent a client who would benefit in any significant way from my proposals.

To begin with, I would like to assure you that any noncomplimentary comment I make about the Internal Revenue Service or any employee thereof or about the Congress or any member thereof is made in a constructive spirit that is intended to improve the system, and not in a vindictive spirit to damage it. For the most part, I have found the civil servants at the Internal Revenue Service to be highly motivated individuals with a sincere desire to collect only what is in their perception the correct amount of tax liability for any taxpayer.

SUMMARY OF PRESENTATION

I recommend that we return to a pre-1948 single tax rate schedule for all taxpayers without regard to any marital or other status. In doing so, I recommend that Congress adopt a federal income tax rule allocating earned income to the person who actually earned it and capital income in relation to the contribution of each person to the purchase of the property, without regard to any state property law allocation to the contrary.

There are many other individuals with similar positions, and I have concentrated my testimony on the problem concerning the joint and several liability imposed on both spouses when a joint return is filed and on the problem of allocation of income to both spouses in a community property state after the spouses have separated but prior to divorce. It is not uncommon for this separation period to extend for many years.

HISTORY OF TAX DISCRIMINATION BASED ON MARITAL STATUS [1]

When the Revenue Act of 1913 was enacted, there was only one rate schedule. The individual was the sole taxable entity and each taxpayer was taxed on his or her own earned income. Because the rate structure was progressive, taxpayers with large incomes attempted to shift their income, particularly unearned but also earned, to other family members to report the income on each taxpayer's individual tax return. This device enabled the family not only to split income but also to increase deductions, thereby subjecting total family income to lower federal income taxes than it would have been subjected to if only one individual tax return were filed with the entire family income.

Much of the controversy concerning the validity of these shifts stemmed from the variation in treatment of marital property by different states. Most states predicated ownership on taking an active role in acquiring income or property. Eight southern and western states, however, had marital property laws based on the community property system, which gave each spouse a half share of any property or income acquired by either spouse after marriage.

The Department of the Treasury acquiesced in the states' determination of title to income for federal income tax purposes. In 1921, the Attorney General determined that husbands and wives could each report half of all community property income on individual tax returns in all community property states in which a spouse's interest vested when the income was earned. Attempts by taxpayers in non-community property states to achieve a similar effect through contractual arrangements were disapproved by the United States Supreme Court in *Lucas* v. *Earl*, 281 U.S. 111 (193).

Since no state laws allowed income-splitting between spouses in non-community property states, the tax treatment of married taxpayers living in community property states differed from that of taxpayers earning the same income in non-community property states. This discrimination was not terribly burdensome, however, because of the low tax rates at the time.

The low federal income tax rates did not produce enough income to offset the expenditures brought about by the Depression and World War II. The tax base was enlarged and tax rates were increased. This change made the advantages to married taxpayers in community property states both significant and conspicuous. Consequently, several non-community property states enacted community property laws. The prospect of more states making the same switch prompted action by Congress in 1948.

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[1] This information is taken from and is discussed in greater detail in Note, "Federal Income Tax Discrimination Between Married and Single Taxpayers," 7 Journal of Law Reform 667 (1974).

The need for action culminated in the first session of the Eightieth Congress. Despite recognition that it was not a complete solution to the unequal taxation problems, the split income plan was chosen by Congress as the method for achieving geographic uniformity in taxation of married couples. In 1947, income-splitting amendments were added to two tax reduction bills. Finally, this became the Revenue Act of 1948, Sec. 301, 53 Stat. 5, 17.

Soon after this bill was passed, Congress began to doubt whether this solution was fair to taxpayers who could not take advantage of its provisions. Congress made a series of rate concessions to reduce the advantages of income-splitting. These reductions confirmed the failure of the 1948 plan to provide equality of tax treatment to all taxpayers without regard to their marital status.

In 1951, Congress began to mitigate the inequities of income-splitting by establishing a special category of taxpayers called "heads of household" and allowing single taxpayers who maintained a home for both themselves and a dependent to pay taxes at a new rate rather than at the high singles' rate. This new rate was halfway between the married and single rate. This new rate was expanded in 1954 to allow single persons who maintained a parent in a separate home to take advantage of the reduced rates. In addition, a new "surviving spouse" category was added which allowed income-splitting joint return rates for two years after the year in which certain taxpayer's spouse died.

In 1969, Congress responded to public pressure calling for tax relief for singles by enacting a new reduced single taxpayer rate schedule as part of the Tax Reform Act of 1969. Despite testimony revealing that two-earner married couples bore at least as much of an inequitable tax burden as did singles, Congress retained the pre-1969 singles' tax rate schedule as the schedule for married taxpayers filing separately. Because of continued inflation and other social pressures on women entering the market place, significant percentages of our married couples are two earner families. The only way to neutralize the discrimination against these individuals is to return to the pre-1948 single tax rate schedule.

JOINT AND SEVERAL LIABILITY

Along with the privilege of filing a joint return, Section 6013 of the Internal Revenue Code of 1954 (hereafter referred to as the Code) establishes joint and several liability for married taxpayers filing jointly. Where a return is filed by a married couple and one spouse does not pay the tax, the other spouse is fully liable for the deficiency.

For many years courts were forced to apply this rule in the harshest fashion even while they realized its inequities. Congress attempted to alleviate this situation in 1971 by enacting Section 6013(e) of the Code, also known as the "innocent spouse" provision. Generally, this rule benefits those individuals who signed a joint return and had no knowledge of the omission of income from the return.

Were this the extent of the innocent spouse provision, I might not be addressing this issue today. After all, if a husband or wife knew that his or her spouse had not reported their entire joint income, he or she is hardly an innocent spouse in the matter. By the same token, if both spouses in a two-earner family failed to fully report their income, they would both be guilty of fraud and misrepresentation.

I submit to you, however, that absurd results have arisen because of the requirements which must be met in order for a spouse to be relieved of any tax liability. First, a joint return must be filed in which the omission of income attributable to one spouse is in excess of twenty-five percent (25%) of the amount reported as gross income. Second, the spouse seeking relief must establish that he or she did not know nor had any reason to know of the omission. Third, this spouse must prove that he or she did not significantly benefit, either directly or indirectly, from the omission of income, and that it would be inequitable to hold him or her liable for the deficiency.

The legislative history of Section 6013(e) indicates that it was designed to bring tax collection practices into accord with the basic principles of equity and fairness. Unfortunately, practice and principle are still poles apart. Many truly innocent spouses are denied relief.

Most of these problems arise from judicial construction of specific terms. What, for example, is an "omission"? When will it be "inequitable" to hold an innocent spouse liable? The answers are far from clear.

A. Knowledge On The Part Of The Innocent Spouse

In order to be relieved from liability, the innocent spouse must establish that he or she had no actual or constructive knowledge of his or her spouse's activities. Where the spouse claiming innocence can be shown to have actual knowledge of this activity, such as knowing that income is being unreported, relief from liability will be denied. But what happens when there is no actual knowledge?

Courts have gone out of their way to prove that the spouse claiming innocence had constructive knowledge, that is, should have known, of the activity that generated the non-reported income. But they are not very consistent in their approach. Facts in a case that are determined by one court to rule out constructive knowledge will be viewed by another court as sufficient to establish constructive knowledge.

Constructive knowledge is as tangible as a will-o'-the-wisp. Take the case of *Ann J. Anderson*, 34 T.C.M. 508 (1975), who argued that the innocent spouse rule shielded her from tax liability for the years 1969 and 1970. The Tax Court ruled that in 1969, she had neither knowledge nor reason to know of her husband's illegal activities. However, she was found to have such knowledge in 1970.

For several years Mr. Anderson had been embezzling money from his employer. None of the embezzled funds were put into an account over which Mrs. Anderson had any control; they were kept in his business checking account. Despite the embezzled funds, their standard of living had not improved in either year. From these facts, the court concluded that Mrs. Anderson had no knowledge of her husband's activities in 1969.

In November of 1970, however, Mr. Anderson was indicted for embezzlement and pleaded *nolo contendere* in February, 1971. The plea of nolo contendere is not an admission of guilt and because Mr. Anderson received a suspended sentence from not less than four nor more than five years in jail, it seems clearly to be a reasonable plea bargain. The court placed great weight on the fact that Mrs. Anderson knew of her husband's activities upon his conviction which did not occur until February, 1971. Therefore, the court reasoned, she had knowledge of the unreported income in 1970.

Does an indictment alone give a spouse reason to know of omitted income? What if he or she can prove that no benefit was received? At first blush, a conviction would seem a solid indicator of reason to know of an omission of income. But what if the plea was bargained as nolo contendere to prevent a jail sentence? The accused has not admitted any guilt. There are numerous reasons why an innocent person may plead no contest, not the least of which is to avoid the expense of future litigation. The truly innocent spouse is harmed in cases like these.

The United States Court of Appeals for the Fifth Circuit added a new wrinkle to the picture in *Sanders* v. *United States*, 509 F.2d 162 (5th Cir. 1975). Even discounting unreported income of $30,000, the Sanders enjoyed a high standard of living. With the unreported income added to the reported income, however, they bought a new home, new cars, traveled to Las Vegas and bought a new condominium in the Bahamas.

The court stated that "one person's luxury can be another's necessity and the lavishness of an expense must be measured from each family's relative level of ordinary support". Mrs. Sanders argued that she had no constructive notice of the unreported income because their standard of living had not changed; they would have made the purchases notwithstanding and had been living in that lifestyle for some time. The court agreed holding her not liable for the deficiencies.

What an absurd result! It appears that the person whose spouse might earn $15,000 a year, does not report an equal amount, and expands the couple's lifestyle will be charged with constructive knowledge of an omissions of income. On the other hand, the person whose spouse might earn $50,000 a year, does not report $15,000, and does not increase the couple's standard of living is not charged with constructive knowledge of an omission of income.

The more difficult it is for the Internal Revenue Service to identify the true nature of a transaction leading to omitted income, the more willing courts should be to grant relief to an innocent spouse. In *Robert L. McCoy*, 57 T.C. 732 (1972), Mr. McCoy incorporated a partnership whose liabilities exceeded its assets, an action which under the tax law results in income to the extent of such excess. Mrs. McCoy knew of the existence of the partnership but did not actively participate in the business. She claimed that she was unaware of the tax consequences of incorporating a deficit partnership and since the transaction did not realize a cash gain, had no reason to know of any income omitted from their joint return.

Common sense would indicate that because the transaction was a complex one, Mrs. McCoy would have no reason to know of the omitted income. But the Tax Court ruled otherwise; "mere ignorance" of the tax consequences did not relieve her from liability. This decision is completely at odds with other rulings which have held a spouse can have knowledge of some of the facts related to the unreported income without being charged with knowledge of the income itself. Many lawyers and corporate executives would not understand the tax consequences of such a transfer. How is a non-businessperson spouse supposed to?

B. Omissions—The Twenty-Five Percent Rule

1. Omissions

To be relieved from liability, the innocent spouse must show that there was an omission from gross income "of an amount properly includable therein". If there is any reference in the joint return to the income in question, there can be no omission. For example, a common argument made by taxpayers is that denial of a claim for a deduction should qualify as an omission. Courts have almost uniformly held that since the deduction is on the return, it cannot be said the spouse claiming innocence was unaware of the omission.

But what happens where the examples of reference to income are carried out to its extreme? Take the case of of *Estate of Klein* v. *Commissioner*, 537 F.2d 701 (2nd Cir. 1976). Mr. Klein was a partner in a business with a net partnership income of approximately $90,845. This amount was listed in the partnership return, and only the net income from the partnership is included on a taxpayer's income tax return. Technically, however, the gross income of the partnership is included in the partner's gross income, and if this larger number rather than the reportable net income is used, the omission did not amount to twenty-five percent (25 percent) of gross income.

In signing the joint income tax return, Mrs. Klein had no knowledge of the partnership business, had not reviewed the partnership return, had signed a return where partnership income was included as required at the net income figure of $90,845 (not actual gross income attributable to Mr. Klein of $1,106,896) and yet the Tax Court and Second Circuit held her liable because of a remote technicality of the law. If this is not absurd, read carefully the following statement of stipulated facts that the Second Circuit accepted in deciding the case:

"The parties stipulated that she [Mrs. Klein] had met the further equitable requirements, namely that *she did not know of, and had no reason to know of the omission of income* * * * and that, taking into account all of the other facts and circumstances, including whether or not she had benefited either directly or indirectly from the omission, *it would be inequitable to hold her liable for the deficiency attributable to it* * * * . (Emphasis supplied.)

The details of Section 6013(e) go against the purpose of the innocent spouse provision, which is concerned with equitable relief for an innocent spouse. As was noted in a recent law review article, "[T]he knowledge of an innocent spouse claimant should be important in determining 'equitable relief' . . . , not the knowledge of the Internal Revenue Service."[3]

2. The Twenty-five Percent Rule

Even if the amount in question is determined to be an omission, it must be in excess of twenty-five percent (25%) of the gross income reported in the joint return. Working with this fixed figure, courts have been forced to make mechanical and clearly ridiculous applications of the law. The results are at times pathetically comical.

In *Wissing* v. *Commissioner*, 441 F. 2d 553 (6th Cir. 1971), Betty Wissing (formerely Mrs. Huelsman) was married to a man who had embezzled more than $100,000 over a three-year period from his employer. The Internal Revenue Service determined a deficiency in their 1963 joint return of approximately $7,291, $2,027 in their 1964 return and $15,871 in their 1965 return. The United States Court of Appeals for the Sixth Circuit found the amounts omitted in 1963 and 1965 exceeded 25 percent of their reported gross income, but not in 1964. Therefore, Betty was liable for the 1964 deficiency, but not the 1963 and 1965 deficiencies.

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[3] James E. Panny and Marc L. Faust, "The Innocent Spouse Provisions Of The Internal Revenue Code: In Search Of Equity," 32 University of Miami Law Review 137 (1977).

The court admitted that Betty had no knowledge of her husband's activities and did not derive any benefit from the embezzled funds. But because she signed the joint return, she became jointly and severable liable for the tax due on any omission less than 25 percent of their reported gross income.

C. The Significant Benefit Test

In order to determine whether or not it would be equitable to hold the claimant spouse innocent, courts look to see if he or she significantly benefited, whether directly or indirectly, from the omission. For the most part, courts have been liberal in granting relief under this test. For example, the Tax Court in *Patricia E. Mysse*, 57 T.C. 680 (1972) held that a spouse did not receive a significant benefit from over $100,000 in unreported income which her husband had embezzled over a four-year period According to the court, any benefit which she received from the funds constituted no more than ordinary support.

But look at the other side of the coin. In *Edward J. Jedinak*, 78 T.C.M. 958 (1978), Mr. Jedinak was involved in a numbers game which netted him substantial amounts of income that he did not report on a joint return. Although Mrs. Jedinak knew of this activity, she had no knowledge as to whether the income was reported or not. The court acknowledged that the amount in question exceeded the 25 percent test and that she did not know, nor had any reason to know, of the omission.

Nevertheless, the court found her liable for the tax deficiency. It appears that they jointly purchased stocks with some of this unreported income. This was found to constitute a significant benefit to Mrs. Jedinak, even though the court conceded that the benefit may not be actually realized for years. A similar result was reached in *Martin S. Schneider*, 77 T.M.C. 751 (1977) where a home was jointly purchased by husband and wife, even though the wife had no knowledge of the unreported income.

The inconsistency of the decisions in these cases are enough to stagger the imagination. In *Mysse, supra*, a woman who languishes in new cars and diamond rings is found to have received no significant benefit, but women who are joint owners in property where benefits may not actually be realized for many years are deemed to have benefited significantly. Where is the logic behind this reasoning? Is this what Congress had intended in enacting the innocent spouse rule?

ALLOCATION OF INCOME IN COMMUNITY PROPERTY STATES

As I have already explained, a taxpayer claiming to be an innocent spouse must have filed a joint return. But what happens in community property states when married filing separate returns are filed? In these jurisdictions, income earned or attributable to only one spouse becomes part of the includable income of the other spouse, even if separate returns were filed. The Code states that "the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws. . . ."

This section of the Code leads to interesting and frequently inequitable results. Let's consider the case of *Mildred L. Fehland*, 75 T.C.M. 1285 (1975) (formerly Mrs. Vandiver). In 1967, her husband earned approximately $10,000 while Mildred earned approximately $3,300. Because of marital difficulties, they filed separate returns that year. The Tax Commissioner determined that since the Vandivers lived in Texas, a community property state, she was liable for the tax on one-half of their adjusted gross community income, or approximately $6,794.

Mrs. Vandiver argued that because she had no control over her husband's income, she should not be liable. Furthermore, she filed a separate return and therefore was not liable for the income.

The Tax Court rejected both arguments. In a community property jurisdiction, it noted, each spouse is liable for one-half of their combined income. At the same time, she could not rely on the innocent spouse rule because she had not signed a joint return. However, even the court had to admit, "[W]e realize that, given equal income interests vested in each spouse under the community property laws, *certain inequitable situations that Section 6013(c) was designed to eliminate may very well arise if the spouses elect to file separately in community property states*". (Emphasis supplied.)

Again, "Catch-22"! In order to avoid liability by filing a joint return, one spouse files separately even knowing that more taxes may be due only to subsequently find out that he or she is liable anyway for the misdeeds of the other spouse. It's the old familiar game of heads you win and tails I lose.

It can at least be argued (although not true in this case) that because the Vandivers were living together they were knowledgeable about each other's financial situation. But what about where the spouses are living apart from one another?

In *Bettie Jayne Coffman*, 33 T.C.M. 1416 (1974), Mrs. Coffman was separated from her husband during the tax year in question. Except for the fact that she had filed a separate return, all other requirements of the innocent spouse tax rule were met. Again, the Commissioner determined that she was liable for the tax on one-half of her husband's income. The Tax Court reluctantly agreed, holding that she could not invoke Section 6013(e) because separate returns were filed, yet was liable because Texas (their domicile) was a community property state. An identical result was reached in Texas just last May and several years ago in Louisiana.

SUMMARY

There is an old saying that everybody talks about taxes, but nobody does anything to improve them. It is incredible to me that the United States Court of Appeals for the Fifth Circuit was forced to adopt a rule contrary to all previous precedent to find an equitable way to solve problems similar to those I have discussed.

The case of *Aimce D. Bager* was consolidated on appeal with that of *Barbara M. Hansen. Bagur v. Commissioner*, 603 F.2d 491 (5th Cir. 1979). Both women were married and resided in Louisiana. In the court's own words:

> The IRS asserts that an income tax is due by a wife on one-half of her husband's unreported earnings—although she may have been living apart from her husband, had no control over his income, and no knowledge of what it was or where it went. The plaintiffs are *impoverished* victims of their husbands' profligacy. *The IRS has stripped clean one of the wives. The other is about to be stripped clean.* This horrendous result flows from Louisiana law, not federal tax law. (Emphasis supplied.) 603 F.2d at 494.

The facts are relatively simple. In *Bagur*, Mr. Bagur suffered extreme financial reverses in 1960. The court continued:

> Mrs. Bagur knew there were financial problems but she did not know their nature or severity; Mr. Bagur never discussed his income or expenditures with his wife. Mrs. Bagur testified that there was no communication between them, even in 1960 and 1961 when they shared a house. After 1962 they rarely saw each other. She had no checking accounts or credit cards and did not own an automobile. All household bills were sent to her husband's office.
>
> In 1962 the Bagurs' financial condition worsened. They received still another notice to vacate the house. Electricity, telephone, and gas were shut off. From 1962 until 1968, when Mrs. Bagur obtained a divorce, the taxpayer and her husband maintained separate domiciles in Louisiana. Mrs. Bagur lived in grinding poverty, often with the utilities cut off, sometimes with not enough to eat. Her three school-age children gave her a little financial assistance from time to time. Mrs. Bagur's health was poor; she was arthritic, anemic, and undernourished. Ground down but attempting to keep her head up, she worked sporadically in 1962, 1963, 1965, and 1966. Mrs. Bagur estimated that during the seven tax years in question her husband paid about $10,000 for food, rent, and other necessities.
>
> Finally, the Bagurs were judicially separated in 1968. As a result of the settlement of the community, following her divorce, she received a piece of property estimated as worth between $2,000 and $3,000.
>
> The Commissioner reconstructed Mr. Bagur's net profit during 1960 through 1966 and assessed tax deficiencies against Mrs. Bagur based on one-half of her husband's taxable income. The Commissioner also determined that Mrs. Bagur was liable for the taxes on wages she received during 1962, 1963, 1965, and 1966. Because Mrs. Bagur earned these wages while living separately from her husband, they were separate property under Louisiana law. La. Civ. Code Art. 2334. She was taxed, therefore, on the entire amount earned. The Commissioner also assessed penalties against Mrs. Bagur for failure to file income tax returns without reasonable cause, I.R.C. § 6651(a); for negligent failure to pay income tax for the years 1960 through 1962, I.R.S. § 6653(a); and for underpayment of estimated tax for 1962, 1963, and

> 1966, I.R.C. § 6654. The total amount owing is $3,860.27. The Tax Court held Mrs. Bagur liable for all the taxes and penalties assessed against her. 603 F.2d at 495, 496.

In *Hansen*, Barbara and Donald were married for twenty-eight years. In 1971, Donald Hansen received commissions of $34,500. The court continued:

> It was a windfall. What happened to the money is a mystery. The Internal Revenue Service was unable to collect the deficiency. At the hearing before the Tax Court Mrs. Hansen represented herself. Counsel for the IRS informed the court that Mr. Hansen had been in dire straits. Mrs. Hansen added that her husband suffered from severe depression. We were informed during the oral argument that Mr. Hansen had committed suicide.
>
> Mr. Hansen was in charge of the household bills, many of which apparently went unpaid. He doled out cash to his wife to buy food and gasoline. She made "everything the [three] girls wore." (Tr. 10). As the daughters and two sons grew older they contributed small amounts to their support. In Lafayette Ms. Hansen had no credit cards. She gave up her checking account when her checks were returned for lack of sufficient funds. She signed her last tax return in 1963 when Mr. Hansen was salaried in Florida and she had a small job. When from time to time she questioned her husband about income tax returns, he used to say to her, "Don't worry about it. It's all taken care of." (Tr. 8). Ms. Hansen estimated that she and the children received about $3,400 from her husband in the form of payments on their house, food, gas, and automobile upkeep.
>
> For the children's sake, Ms. Hansen put up with her husband until 1972, when her youngest child was in high school. Ms. Hansen then instituted separation proceedings. She left the marriage with only a few household goods—no cash, no securities, no automobile. The mortgagee foreclosed the mortgage on the home. Ms. Hansen now works for the local telephone company.
>
> The Commissioner determined that Ms. Hansen owed taxes on one-half of the income, $34,500, her husband received in 1971. The Commissioner determined that Mr. Hansen incurred business expenses of $5,000 and decreased Ms. Hansen's share of the community income by $2,500. The tax deficiency assessed against her amounted to $3,064. The Commissioner also assessed various penalties for Ms. Hansen's failure to file returns and pay taxes. Before the Tax Court, however, the Commissioner conceded that the penalties were not applicable. In the Tax Court hearing, Judge Sterrett showed signs of reluctance to hold against Ms. Hansen. Nevertheless, in 1977 the Tax Court sustained the Commissioner's determination that Ms. Hansen owed taxes on one-half of her husband's earnings in 1971. On March 6, 1978, the IRS notified Ms. Hansen that her wages were subject to a tax lien and would be seized to satisfy the deficiency. 603 F. 2d at 496, 497.

The decision by the Court of Appeals to remand the case back down to the lower courts representel a victory to the taxpayers. An intent to deprive a wife permanently of her share of community income, the court held, may be inferred from a husband's wanton appropriation of her community assets in pursuit of his own pleasures or needs. The issue, the court stressed, is not whether the husband should be punished as a thief (which he could not under state law) but whether the wives should be allowed a tax loss as a victim of a theft under the federal tax laws. All previous procedent required that you look to local law to define "theft". Never has a court created a federal law of theft, something the Fifth Circuit found it had to do to prevent the injustices to the taxpayers before it.

The court ruled that it was for the lower courts to decide if the husbands had appropriated their earnings for their own purposes in such a way as to be equivalent to a theft of the wives one-half of the earnings. If this were so, the wives would be able to deduct as a theft loss this amount, thereby reducing their one-half of the joint income to zero and incurring no tax liability. Interestingly, to claim a theft loss, you must itemize your deductions. Wouldn't it be interesting to find a tax imposed because the taxpayer had insufficient itemized deductions?

In one motion the court established a method for community property taxpayers to escape liability for one-half of the community income. It took remarkable legal reasoning to reach a result that the overwhelming majority of people would consider the equitable result. How long must such machinations continue? They would not be necessary if taxpayers were liable only for the tax on their own earned income and capital income in relation to the contribution of each person to the purchase of the property.

RECOMMENDATION

It is my recommendation that we return to the pre-1948 single tax rate schedule for all taxpayers without regard to marital status or other status. Doing so would relieve many of the inequities that have arisen because of piecemeal efforts to prevent one group of taxpayers from obtaining some perceived advantage over another.

There should be a codification of the principle that earned income be taxed to the one who earns it. Income from property should be taxed to the owner of the property or in their respective proportions if the property is jointly owned. Since 1948, Congress, the courts and the Internal Revenue Service have devised sophisticated tests for determining the true owner. Rules can be worked out to handle the allocation of income with respect to any method of jointly holding property.

A return to the pre-1948 single tax rate would obviate the need for an innocent spouse rule, for there would no longer be any joint and several tax liability. Any problems that might arise with the single tax rate can certainly be overcome. A single return for married taxpayers could operate along the lines of the New York State tax return, that is, married taxpayers each file singly and pay the same rates as two single taxpayers. A method to allocate exemptions, deductions and credits can easily be developed.

RAYTOWN, MO., *March 19, 1980.*

HOUSE WAYS AND MEANS COMMITTEE,
Washington, D.C.

GENTLEMEN: I understand you are holding hearings April 2 and 3 on the tax disparities between single and married persons.

I would like to add my name to any statistics you are compiling on this question. I do not feel there should be different rates for singles or marrieds. The tax tables should be based on the amount of money only and should apply equally to all.

I also feel that the heading "Head of Household" needs to be more clearly defined but should be broadened to include those who are maintaining a home for more than one person—whether it be immediate family member, relative or a non-related person they have assumed the care of on a full time basis. I do not fall in this category so there is no personal interest here. I just think there are many inequities in this heading.

Sincerely,

BARBARA JEAN FRAY.

SAVANNAH, GA., *March 28, 1980.*

Hon. AL ULLMAN,
Chairman, Committee on Ways and Means,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. ULLMAN: In connection with the hearings to be conducted by your Committee on April 2 and 3, 1980, on the tax treatment of married, head of household, and single taxpayers, I respectfully submit the following remarks in support of Rep. Fenwick's bill, H.R. 3609.

By way of introduction to the Committee, I am enclosing my curriculum vitae. In summary, I have been a practicing attorney for twenty years, of which fifteen have been devoted to the specialty of tax law. As such, I have numerous occasions to hear the complaints of taxpayers who sincerely believe that a system that imposes a penalty upon working members of the family is a disincentive to initiative, productivity, and honesty in reporting, as well as a governmental mockery of the increasing burdens on the American family.

Rep. Fenwick's bill appears to be the most equitable solution to a difficult problem. Even in the face of arguments against it, it undoubtedly renders more substantial justice than either the status quo or any other remedial legislation that has been brought to my attention.

With your permission I wish to comment briefly on (1) the historical background that created the current disparity in tax rates, (2) the social aspects of the present systems, (3) the advantages of enacting Rep. Fenwick's bill, and (4) the expectable costs of her legislation.

(1) HISTORICAL BACKGROUND

The marriage penalty came about, probably inadvertently, when the Congress in 1969 lowered the rates of unmarried taxpayers to meet their objection of discrimination vis-a-vis married couples filing jointly. The argument was that a single person should not pay substantially higher taxes on the same amount earned by a breadwinner who filed a joint return with his spouse. That complaint must be considered in the context of three points:

(A) The reason the joint return rates were enacted in the first place was that non-community property States were beginning to adopt community property laws solely to obtain a parity with the income-splitting available in community property States. In order to forestall the rush to such legislation for purely tax purposes, the Congress achieved uniformity throughout the country by recognizing the right to split income irrespective of whether local law recognized community property rights.

(B) The complaint of single taxpayers overlooked the fact that, while their argument may have some merit in households where only one spouse earned the income, the resulting new legislation would penalize the household in which both spouses have the initiative or necessity to work. Where both spouses are income earners, it is the graduated nature of income tax that automatically makes any comparison untenable as between joint income of two taxpayers with the like income of one taxpayer.

(C) The 1969 legislation also failed to recognize the greater financial burden that normally falls on married couples. On that point, please note the opinion of the United States Tax Court in *Vivien Kellems*, 58 T.C. 556 (1972), in which the joint return rates withstood constitutional challenge on the argument that the benefit of income splitting was denied to single persons. The Court held that "Congress was within the bounds of its constitutional role since it is conceivable Congress believed that married persons generally have greater financial burdens than single persons." The Court continued as follows:

> Furthermore, the fact that the income-splitting device grants the greatest amount of tax reduction to those earning high incomes simply reflects the graduated rate structure of the Internal Revenue Code. This factor in no way negates the idea that the provision was an acknowledgement of the greater financial burdens of married persons since in any given income category the married person filing jointly will pay less tax than a single person having the same income.
>
> * * * * * * *
>
> It is fully within the power of Congress to enact provisions reducing or modifying the effect of the graduated rates, subject to the restriction discussed above; that is, if the change in the rate structure is not equal as between classes of taxpayers, there must be a rational basis for the distinction. In this case the geographic equalization of taxpayers as between community and noncommunity states and the recognition of the greater financial burdens of married persons provide such a rational basis.

The side effects of the 1969 lowering of rates on single taxpayers was to penalize families in which both spouses work. This is so not only in the high brackets; it is an injustice permeating the brackets from the lower ones on top.

(2) SOCIAL ASPECTS

The social implications are obvious. While our tax and other laws have historically encouraged and protected the institution of marriage, this apparently accidental result of the 1969 Tax Reform Act has the effect of an annually recurring surcharge on working couples. Furthermore, the sexist overtones that I cannot imagine were intended originally become a more credible factor each year the Congress fails to rectify this burden, which is triggered in particular by married career women. The result has been increased living arrangements between unmarried individuals who feel they "cannot afford" to marry or even the divorce and subsequent cohabitation of working couples.

Perpetuation of this tax quirk will give the mistaken impression of Government encouragement of illicit relationships, uncertain property rights, illegitimate births, other consequences that flow from an avoidance of marriage. Snickering about the Government's motives in endorsing a so-called "marriage tax" has continued long enough.

(3) REMEDIAL LEGISLATION

Rep. Fenwick's bill is not a matter of creating new preferential rates, such as those that policy encourages for such special relationships as heads of the household or the average married couple, but rather an election of the very tax rates to which a person becomes automatically entitled from the moment of birth. Just as married persons are legally free to decide whether to have separate or joint bank accounts, to live on their separate earnings or to pool them as a common fund, so should they be permitted to determine whether to keep their earnings separate or to consolidate them for tax purposes. Their act of marrying should not be the one factor that raises their tax rates.

The weakness of the 1969 legislation was its failure to recognize that the joint return is not necessarily the return of one wage earner that is signed by a non-working spouse to lower taxes. Unfortunately, the last eleven years have been fraught with escalating economic problems and overburdening inflation that force more and more husbands and wives to work. The latest statistics show that 42 percent of women with children under the age of six are working, a casualty of the erosion of the purchasing power of the U.S. dollar.

The result is a large mass of frustrated taxpayers who are forced to work in order to keep things going but at the cost of disproportionately greater taxes in the process than had they remained single. Many complain to tax lawyers like myself without making their views known to Washington. Unfortunately, too many others have either divorced or declined to marry, opting instead to live together unmarried.

Some proponents of the status quo argue that it encourages one marriage partner to remain at home in contact with the children, which is a social good. Such arguments weaken in the face of economic necessity and working couple statistics. Even to the extent valid, that argument would have to suffer retention of a discriminatory tax burden in order to encourage its social good, while Rep. Fenwick's bill seeks to eliminate that tax burden while also encouraging achieving a social good (encouraging legitimacy of relationships).

(4) THE COSTS OF THE PROPOSED LEGISLATION

On its face, the only real cost to the proposed legislation is whatever loss may result to the revenues directly from a change in tax rates. However, calculation of that figure necessarily requires an offset for the amount of additional taxes generated by the income to be earned by the second spouse. In a society in which our productivity is dwindling at such an alarming rate, I should think that the proposed legislation could serve as one of several tools the Government could use to increase employment and productivity while raising new revenues in the process.

In conclusion, I must say that I do appreciate the difficult and complex policy issues that confront your Committee. Perhaps it is impossible to devise a system of perfect equality in tax rates. What, I think, is unavoidable is the conclusion that the Government should never be in the position of having to justify well-intended legislation that has paid people to avoid marriage and encouraged ridicule and utter disrespect of the tax laws. If no ideal remedy to the current problem can be developed, certainly the approach of Rep. Fenwick is materially fairer than what we have now. My firm belief is that the elimination of this grossly unfair situation will help correct a social ill, will probably pay for itself, and will help a bit to restore confidence in government by reflecting a legislative willingness to treat each taxpayer as a separate and distinct individual.

As requested in your announcement of February 29, I am enclosing an additional four copies of this letter. I respectfully request that these remarks be considered by the Committee in the course of its hearings.

Respectfully,

JULIAN R. FRIEDMAN.

Glenda M. Bayless Accountancy Corp.,
Rialto, Calif., March 25, 1980.

John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means, Longworth Office Building, Washington, D.C.

Dear Mr. Martin: The tax laws in the United States at the present time discriminate against married couples versus single taxpayers. This has created a situation where many couples find it is more beneficial to live together unmarried rather than marrying and paying a substantial amount of their income in additional taxes. For example, an unmarried couple each earning $20,000 per year will pay $2,850 less in federal income taxes for 1979 than a married couple with the same income.

We wholeheartedly support legislation to help eliminate these inequities in tax laws, and believe the tax laws in the United States must be changed to eliminate the present "living in sin" subsidy of our current tax laws. There should be no discrimination in our tax laws based on marital status.

Glenda M. Bayless,
Certified Public Accountant.

Letters identical to the above were also received from: H. J. Green, Fred W. Karlen, and James W. Vail III, all of Riverside, Calif.

Meridian, Idaho, *March 27, 1980.*

Representative Al Ullman,
Chairman, House Ways and Means Committee, House of Representatives, Washington, D.C.

Dear Congressman Ullman: I am a single, 37-year-old working person, have no dependents, and am quite depressed and distressed over the present tax schedule for single persons. I make about $100.00 a month more than a married woman I work with, yet her "take-home" pay is about $5.00 less than mine. She has no dependents and her husband's salary is around $1,000 per month. I feel that I am very much discriminated against because I have chosen not to marry. Because of my tax status, the government makes it very difficult for me to save money, buy a house, invest, etc.,—all the things it seems "married" people, with or without children, are able to accomplish. While it may be true that "two can live cheaper than one", it must be awfully nice doing it with a double income and less taxes.

I don't understand why every taxable person isn't on the same tax schedule and adjustments are made according to number of dependents. The solution seems simple enough to me. I'm tired of supporting the "married" people of America.

Thank you for anything you can do for the *Single* people!

Sincerely,

Virginia Goitia.

Washington, D.C., *March 31, 1980.*

Mr. John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

Dear Mr. Martin: Please enter into the official record my support of H.R. 3609, Mrs. Fenwick's bill to eliminate the unfair Tax on Married Couples in the United States.

The policy of penalizing married couples for selecting this lifestyle is obscene and cannot be allowed to continue. I look forward to the passage of Mrs. Fenwick's resolution and will gladly amplify my written comments with oral testimony should I be called upon to do so.

Sincerely,

Joe Jeff Goldblatt.

DENVER, COLO., *March 30, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

MR. MARTIN: Please consider this letter our statement in favor of passage of Representative Fenwick's bill H.R. 3609, elimination of the unfair "tax on marriage," which has been scheduled for hearing April 2nd/3rd. Please file this, our statement, for the record of the hearings.

JOHN P. GRATIOT,
SUSAN MORGAN GRATIOT.

STATEMENT OF HON. MIKE GRAVEL, A U.S. SENATOR FROM THE STATE OF ALASKA

I appreciate the opportunity to submit testimony to the House Ways and Means Committee regarding the marriage penalty tax. This tax is onerous in times of relative economic stability, but is clearly insupportable during periods of uncontrollable inflation. The bill that I introduced last May in the Senate would not totally eliminate the marriage penalty incurred by two-earner families, but it would substantially relieve the unfair additional tax burden on these families without a serious drain on the Treasury. I would like to briefly explain to the Committee my analysis of the problem and my reasons for choosing the legislative solution embodied in S. 1247.

A married couple experiences two phenomena when they fill out their tax form: one, their two single standard deductions have been replaced with the lower married deduction; and two, if both are working the combination of their incomes has catapulted them into a higher tax bracket. The second phenomenon becomes increasingly visible as husband and wife earn equal shares of the family's income. Inflation further exacerbates the problem by pushing them into higher and higher tax brackets while their buying power is ever decreasing.

The often substantial increase in tax liability due to wedlock is inconsistent with my understanding of our existing federal tax policy. We have been guided by several principles which are meant to make our tax system a just one. The most important of these are undoubtedly that taxation should be progressive and that individuals with like incomes should pay similar tax. Another important principle has been that marriage should neither be penalized nor rewarded by our tax law. We cannot totally achieve all three goals; our task has been to adjust all three in order to achieve an equitable distribution of tax burden. I think we have been relatively successful in terms of the single taxpayer and the traditional one-earner family. But our achievement is lacking in terms of the two-earner family because working couples experience a significant increase in tax liability when they marry. We have not successfully extended the principles of marriage neutrality and tax parity (taxing equal incomes equally) to two-earner couples.

To demonstrate the inequity of treatment consider the single person in 1979 who earned $20,000 and was taxed $3,837 as compared to the one-earner family also earning $20,000 and taxed 2,745. Clearly, in terms of tax liability, substantial allowance has been made for the additional financial responsibilities associated with families. Now when you look at the two-earner couple with an income of $20,000 you notice that family status has worsened their tax situation. If you assume each person is earning $10,000 towards the family's $20,000 income their joint tax liability has increased from $2,345 to 2,745. This increase of $391 is due solely to their marriage, for them it is the marriage penalty.

There are proposals before the Committee which would reevaluate the three tax units and perhaps eliminate the single-family distinction. The members of the Committee are well aware of the complexity of the issues involved in this task. I do not necessarily disagree with any of the approaches of these bills; there are pros and cons attributable to all. But, as a member of the Senate Finance Committee, I do not foresee an opportunity in the near future for a thorough investigation and resolution by our respective committees of the very difficult tax policy questions presented by the marriage tax.

And yet, a consensus on the inequity of the marriage penalty tax is building and demanding that we take action. Therefore, I have proposed a tax deduction of 10 percent of the lower earner's income up to $20,000. This approach will substantially reduce the marriage penalty while not altering current tax policy; it also minimally depletes general revenues—approximately $3.5 billion is the estimated cost.

I am very pleased that two members of the Ways and Means Committee have introduced bills similar in concept to S. 1247. With the leadership established in this Committee to explore the marriage penalty tax I feel confident that we can resolve this issue in the near future. I want to add that I would encourage both the Finance Committee and the Ways and Means Committee to study the appropriateness of current tax units when time and resources allow us to effectively deal with all the issues. I am convinced that we need to reevaluate both the relative tax burden distributed among the three tax groups and the rationale for distinguishing between married and single. Our society has changed and its time our tax policy caught up.

I would like to make one further comment about the impact of the marriage penalty tax. As much as any other factor, broadened equal career opportunities for women have encouraged the advent of the two-earner family. Our tax policy which discourages this phenomenon, contradicts those federal policies which seek to bring women into the labor force. The marriage penalty tax provides a negative incentive for women to enter the labor force and unfairly penalizes them when they do.

Our current economic problems will also motivate more women to seek employment. What they will find are government programs and policies assuring them success but imposing a high cost if they are a two-earner family through an excessively high tax on their income. Efforts to increase the family's income to keep pace with double-digit inflation will be a losing battle as long as we allow the marriage penalty tax to continue.

Our constituents are outraged and will not accept excuses why we cannot address this well-known inequity that has a demonstrable negative effect on families. We have the wherewithal to reduce the marriage penalty tax this year. The comprehensive hearings scheduled by this Committee is an encouraging first step.

STATEMENT OF HON. S. WILLIAM GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, Members of the Committee: Your work today involves some of the more important tenets of our society including equal justice, equal pay for equal work, and non-discrimination against selected lifestyles—including marriage. I urge that this Committee take needed action to bring an end to the so-called "marriage tax".

It is ironic that our society, which has long promoted and praised the virtues of work and marriage, would now discourage both through the tax system. I believe that legislation that I have introduced, H.R. 1295, The Marital Status Tax Equity Act of 1979, will correct this situation, and I hope that the Committee will consider H.R. 1295 as it considers this matter.

Our aim today is to eliminate some of the discouragement and added tax burden associated with the marriage tax—the difference between what a working married couple pays in taxes and what they would pay if they were unmarried. The only way marrieds can avoid the higher tax is to get divorced. This is a strange action for our nation to encourage, especially in light of the number of families dissolving without government's encouragement.

The same pernicious element of our tax system discriminates against married working women who are entering the workforce in increasing numbers. These women lose an unduly large amount of their paychecks, because the tax code combines their incomes with their husband's when determining their joint tax bracket and subsequent tax payment.

There is a third level of unfairness to working couples. As the IRS does not consider the cost of earning a salary, couples who work must absorb their double cost of commutation, work clothing, and out-of-home meals. Also, as both are away from the home through the workday, many of the traditional "homemaker" chores need special attention. The tax codes does provide some compensation for child care, but this consideration must be expanded to consider other costs born by working married couples.

Consider a person earning $30,000 a year whose commuting expenses are approximately $1,100; extra clothing costs are $500, and out-of-home meals $200 extra. With the standard deductions, the net income of this single person, after taxes, will be $23,500. A working married couple earning $30,000 with each spou earning $17,000 has to double the expenses of earning a salary and pay $904 more in taxes. Therefore, without considering the double social security payments, this couple will have an after tax net income of $20,807.

There may have been a time when the "marriage tax" was not considered to be a major statistical phenomenom because few married women worked. Today, due to a combination of the positive impetus of sexual equality and the negative push of inflation, today, more than 50 percent of the wage-earning families have two breadwinners. Our tax code must change to reflect this change in our society.

If moderate-income people are to eat reasonably and have a decent place to live, many of them need two salaries. It is highly unfair for the government to then take away much of that necessary earned income.

I hope that the Committee is successful in eliminating some of the tax code's discrimination against working marrieds. They deserve an even break.

Thank you for providing me with this opportunity to discuss with you what I believe to be one of the greatest existing inequities in our tax code.

EAST DETROIT, MICH., *March 29, 1980.*

Mr. JOHN MARTIN, Jr.,
Chief Counsel, House Ways and Means Committee,
Washington, D.C.

DEAR SIR: I am very much disappointed in the un-fair taxation of married people in the United States.

Before getting married in 1976, my income tax was deducted by this school board at a sufficient rate that provided me with a nominal return the following year. My wife, also a school teacher, faired the same fate.

Then we got married—which by tax standards now—was a serious mistake tax wise. I would like to know on what grounds two single people getting married can have some politician say "tax them not on a single job basis—but add their salaries together and tax them on the combined salary as a single person at the highest tax rate."

We would welcome paying income taxes on our salary as one person. Then, being married, add the single totals together and mail the tax papers to Washington.

As it stands now—un-fairness is rampant in the taxable land. Something must be done about this problem quickly, or people like myself will flock to the divorce courts for remedy. This past year my wife and I were "socked" for $1582.00 over what the school board deducted and forward to the banks quarterly. This is morally wrong to be taxed on an unfair tax table.

Personally, I feel you gentlemen never read your mail, nor take heart if you have a big mistake on your hands and can not correct it with common sense. The last is still what makes this land great.

Sincerely,

ALLEN F. GRELLE.

DENVER, COLO., *March 27, 1980.*

Hon. AL ULLMAN,
Chairman, House Ways and Means Committee,
U.S. House of Representatives.

DEAR MR. ULLMAN: I am writing to this committee in reference to the tax inequity and discrimination facing married persons. I request that this letter be submitted to the House Ways and Means Committee as written testimony and become part of the official record of the hearings concerning this subject before this committee on April 2 & 3, 1980.

My husband and I were married July 31, 1976. On the 1975 tax return prior to our marriage, he received an $800.00 Federal refund and I received a $600.00 refund. When we filed our first joint return for the 1976 tax year, we had to pay an additional Federal tax of $1,200.00. The only thing that had changed was my name. Because of job commitments and family responsibilities, Mr. Grelle has continued to live and work in Detroit, Michigan where he has taught Junior High School Business classes for 33 years. I am continuing to live and work in Denver, Colorado where I have taught Special Education for 22 years.

Mr. Grelle and I have designated zero dependents deductions on our paychecks in order to avoid additional payments at the time of filing our returns. Yet, we had to pay an additional $1,400.00 for the 1977 tax year.

During 1978, Mr. Grelle's aged father was extremely ill and required constant hospitalization or custodial care. As a result of this illness and death, we had $9,000.00 in medical deductions on the 1978 return and received a $35.00 refund.

We filed the 1979 return with great apprehension. With two less dependents, we now have to pay an additional $1,582.00 Federal income tax, resulting in a total 1979 expenditure of $13,000.00.

Our tax accountant has estimated that during our 3½ year marriage we have paid at least $10,000.00 more in Federal income tax than we would have paid if we had not secured a piece of paper called a marriage license.

Mr. Grelle and I are more aware of the severity of this "Marriage Tax" because we married at middle age and near the peak of our earning potential. Many married couples are not aware of this unjust taxation.

Our religious and moral backgrounds and beliefs will not permit us to "cohabitate" without the benefit of marriage. The secure family structure is absolutely necessary for a healthy future for America. The Federal Government cannot continue to undermine the family system and discriminate against married persons.

Mr. Grelle developed cancer in 1974. He is approaching a 5 year cancer-free milestone after an extensive and very expensive medical battle and recuperation. We have 2 children in college and support a two year old grandson. We are financially responsible for Mr. Grelle's mother in Indiana, assist two aged aunts in Texas. Because of our assistance, these relatives have required little or no public assistance. Yet, we paid 23 percent of our 1979 income in Federal income tax. In addition to this we paid state, county, city, sales, property auto, gasoline and many other forms of taxes. We both contirbute to public retirement programs and Mr. Grelle contributes to Social Security.

The unfair "Marriage Tax" added an additional eleven billion dollars to the United States Treasury last year. Our government no longer can require the backbone of this nation to continue to carry this unfair, discriminatory, and immoral load of responsibility.

I have contacted U.S. Representative Ken Kramer and U.S. Senators Gary Hart and William Armstrong of Colorado. They have assured me of their support and assistance. Mr. Grelle has contacted U.S. Representative William Brodhead of Michigan's 18th District, who is a member of the Ways and Means Committee. We are aware that more than 200 representatives and senators have contacted Mr. Ullman about this matter and that many bills have been introduced to remedy this situation.

We are committed to continue to work and to exert pressure in order to secure equity for working married couples such as ourselves who are supporting this nation at a cost of $11,000,000,000.00 each year. Your serious consideration of this problem and action to remediate it is respectfully requested.

Respectifully,

JUNE WELLS GRELLE.

BORDENTOWN, N.J.

Committee on Ways and Means:

I am support of Mrs. Fenwick's bill to end the "Marriage Tax", which penalises married couples by taxing them at a higher rate than if they were unmarried.

CAROL HAAS
(And 11 others).

SAGINAW, MINN., *March 26, 1980.*

Hon. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR CHIEF COUNSEL MARTIN AND COMMITTEE MEMBER: Please record at the Hearings on "marriage tax" that I support the bill allowing married couples the option of being taxed as if they were single.

Respectfully,

LORETTA M. HANSON.

STATEMENT OF HON. HERBERT E. HARRIS II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

I am pleased to have this opportunity to testify before the House Ways and Means Committee on the glaring inequity which exists in the U.S. tax code that has become known as the "Marriage Tax". I believe that this anomaly in the tax law is inherently unfair and threatens the traditional American family unit.

Under present law, a husband and wife who both work generally pay more tax than they would if they were single. The Internal Revenue Service estimates that more than one-half of all taxpayers are married and at least one-half of all married couples are two-earner couples. This means that almost one-quarter of all taxpayers may be affected by the "Marriage Tax".

Mr. Chairman, these provisions in the federal tax code which penalize young families by subjecting working couples to higher tax rates should be eliminated. Through the tax system, the federal government has placed a financial burden on working couples that, if anything, acts to discourage marriage. This is wrong. The family is, and must remain, the primary unit of society.

More and more married women entered the job market to help make ends meet for their families, and to pursue careers of their own, only to find that their contribution to the family budget is seriously eroded by this "tax". I believe that public policy should *encourage* the family—not penalize it.

This inequity can be eliminated by allowing married persons to file separate returns to be taxed at the same rate as unmarried individuals. I believe that the tax burden should be distributed fairly with an emphasis placed upon the number of people dependent on a particular income—not the taxpayer's marital status.

I urge your Committee to take prompt action on this important matter and eliminate the "Marriage Tax".

COCOA, FLA., *April 3, 1980*.

MR. JOHN M. MARTIN, JR.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I am writing this letter in strong support of the Tax Reform Bills of Representative Fenwick of New Jersey and Senator Charles C. Mathias of Maryland that would give couples a choice of filing a joint return or filing a single, whichever is least costly. I support this Bill as a simple matter of equity. Also, I feel that with 49% of all married women employed at the present time, that this Bill would bring a great deal of relief to hard working couples as well as a great deal of support for home and family which so badly needs such support in today's complex world.

I support this Bill not only from a personal viewpoint since I am a married professional woman, but also because I am a Dean of Special Programs as Brevard Community College in Cocoa, Florida, and deal daily with the concerns of women who are returning to school and re-entering the work force. The societal reasons that the bringing women into the work force today are based primarily on economic reasons—those of inflation and the need for income to support family needs. Any time we countenance the tax situation that penalizes people who are the working corp of our nation or who penalize the married family, we are undermining some of the most primary premises upon which our country is based.

I intend to lobby for this Bill and would appreciate any information you could give me on how soon this Bill, or one similar to it, will be passed.

Currently I am a regional representative in the southeast for the American Association of Women in Community and Junior Colleges and intend to use all the networking at my disposal to support this Bill.

I want to urge the committee to schedule hearings on the Bill as soon as possible, because I would like to see this Bill voted on so that equity for women and men in a marriage relationship will be insured.

Sincerely,

MURIEL KAY HEIMER, Ed. D.

COLUMBUS, N.J., *April 4, 1980*.

DEAR MR. MARTIN: I am strongly opposed to the "Marriage Tax" in this country. It would seem that there is enough pressure on the institution of marriage without this added financial burden. It must be remembered that the family made this country what it is today. What a shame when people feel they will be more financially sound just living together. Please make a stand and support Congresswoman Millicent Fenwick's bill opposing this tax.

WILLIAM HILL.

STOCKTON, CALIF., *April 1, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, Longworth Office Building, Washington, D.C.

DEAR MR. MARTIN: This letter is to urge the Committee on Ways and Means to change the income tax laws to remove the "marriage tax."

The current United States tax laws cost a married couple each earning $20,000 per year approximately $2,800 more than an unmarried couple.

Legislation to remove such inequities is necessary on more than moral grounds. With every increase in inflation, it is necessary for more and more families to require two wage earners to feed, clothe and educate their children.

There should be no discrimination in our tax laws based on marital status.

Sincerely,

SUE N. HINRICHS.

STATEMENT OF HON. JON HINSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. Chairman, Members of the Committee: I welcome this opportunity to present my views on legislation to repeal the "tax on marriage." I would like to thank the Committee for scheduling these hearings on the various legislative proposals relating to the comparative income tax treatment of married couples, single persons and heads of household. It is time for the serious consideration of this remedial legislation; with tax time upon us millions of Americans will be filing Federal income tax returns, and millions will be paying a tax penalty simply because they are married.

Several proposals have been introduced to alleviate this gross inequity in our tax laws, ranging from allowing married couples the option of filing as if they were still single, each taking the single zero bracket amount and each using the single rate schedules, to giving married couples a tax deduction of 10 percent of the lower earning spouse's income. Reconciling the many complex and different approaches will not be an easy task; but as one of the many cosponsors of legislation addressing the existing "marriage penalty," I urge the Committee to reach some form of a workable and equitable solution to this problem.

I feel that it is fundamentally wrong for our Federal tax structure to create a situation which penalizes married people and destroys a wide range of normal incentives for family stability and maximum work efforts. The marriage tax, by its very nature, strikes at the deepest traditions of our society.

Furthermore, the present tax law does not reflect present social conditions. The marriage penalty poses no problem for what used to be the typical family—the husband earning all the money and the wife working only in the home. Such families benefit from the tax code's bias toward one-earner couples. However, with 57 percent of today's families having both the husband and wife working, this is no longer the norm. In these days of high energy costs and double-digit inflation, a family's secondary income is an economic necessity. And there is every indication that the female work force will continue to increase. Clearly, the male "head of household" concept which holds sway in national tax policy is no longer accurate nor fair.

Five years ago, at least 13 million married "two-earner couples" were penalized, paying a marriage tax of approximately $2 billion to the Federal government. The Internal Revenue Service has estimated that more than one-half of all taxpayers are married, and at least one-half of all married couples are two-earner couples. This marriage tax adversely affects one-quarter of all American taxpayers at all income levels.

The marriage penalty hurts families in which both spouses earn an income; it decreases as one spouse's share of the family income drops toward 20 percent. Two single persons earning $10,000 each and not itemizing deductions would owe

$1.177 each, or $2,354 total. If they married, their taxes would jump by $391. If one of the two single persons earned $15,000 and the other $5,000, they would pay total tax of $3,837. Marriage would cost them an additional $150.

The penalty rises with income. A $20,000 earner and a $10,000 earner pay $5,014 in tax. A wedding would increase their tax bite by $579 a year.

Current tax law also has the effect of taxing the lower-salaried spouse at a much higher rate, as well as disregarding the difference in expenses between one and two-earner couples. An even further discrimination against married working persons is the tax credit for employment-related expenses, which is currently available only to single persons.

Such proposals as that introduced by my colleague from New Jersey Mrs. Fenwick seek to address the existing inequities by allowing married two-earner couples the option of filing as if they were single. Either spouse may claim deductions for dependents and the child-care tax credit, but they may not be claimed more than once. No hardship would be created for any other group of taxpayers, since this proposal would affect only those who are subject to the marriage tax.

Until some solution is reached to append the "marriage penalty" embedded in our income tax codes, millions of working, tax-paying Americans will be unjustly discriminated against and the famly concept will be undermined, as couples are actually given a financial incentive for divorce.

BURLINGTON, MASS., *March 31, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. MARTIN: Congresswoman Millicent Fenwick has asked us to convey our feelings about her bill, H.R. 3609, which would allow two-earner married couples to file as if they were single. We are happy to do so.

By forcing a married couple to pay taxes in addition to what each paid prior to their marriage, the federal government is placing a tax on their marriage. In all that we have read about this, we have yet to read any argument in its favor. Indeed, why should a married couple pay more income tax than two single people with the same amount of income? Are they able to buy anything for less money than two single persons would have to pay?

The magnitude of the marriage tax is stunning; for us it far exceeds the total amount we spend on gasoline, heating antd electricity. In addition this tax is especially unfair to married women as a group since their generally smaller wages are immediately taxed at a rate depending on their husband's income.

The United States Congress should eliminate this discriminatory and in particular anti-woman practice immediately.

Sincerely,

BARBARA A. CAPRON.
DAVID O. HOLM.

NEW YORK, N.Y., *April 1, 1980.*

Mr. JOHN M. MARTIN, Jr.
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I am writing to urge you to pass H.R. 3609, the bill to eliminate the unfair tax on marriage.

My husband and I were married in October, 1978. Come April 15, 1979, we owed the IRS $700. If we had remained single, we would have each received $150 back from the government. That is a difference of $1,000 just because we are married! No wonder the family is disintegrating—getting married is not an economically sound proposition.

All this tax does is to encourage young people across the country to live to-

All this tax does is to encourage young people across the country to live together; in other words, to break the law.

Thank you for your consideration.

Sincerely,

SUSAN HOOD.

HIGHLAND PARK, N.J., *March 10, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: Have read that the House Ways and Means Committee will hold a hearing on the "Marriage Penalty" tax on March 21.

While I cannot be in Washington to testify, it is very important that this "Marriage Tax" be eliminated. Many couples are not getting married because of this tax and it is a severe hardship on married couples. After taxes have been taken out of each salary, married couples are thrown into a higher bracket and penalized because of this tax.

Anything that can be done would be appreciated.

Sincerely,

(Mrs.) SARAH HOROWITZ.

SOMERVILLE, N.J., *March 28, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I am writing, representing myself, Linda M. Huffenus, and my husband, Gerald M. Huffenus, to file a written statement for the record of the hearings on H.R. 3609 scheduled for April 2nd and 3rd, 1980.

In 1977, as single adults, each earning approximately $10,000/year, we received refunds of approximately $250.00 each on our income taxes. We had each claimed "0" on our employee forms for the amount of taxes to be deducted from our respective paychecks.

On September 16, 1978, we married. When we computed our taxes for 1978, we discovered we were required to pay $150.44. Our incomes were almost exactly the same (a slight increase for me had been balanced by a slight decrease for Gerald). The reason for us having to pay $150.00 was because we were married, and had to use the "Married" tax tables. Because $150.00 was a large sum for use to come up with, we recomputed our tax as if we had remained single, but instead had chosen to live together. To our shock, we discovered that had we been living together, we would have received a refund of over $300.00 on our taxes.

This year, computing our taxes for 1979, we find we must pay $75.00. However, if we had not wed but had lived together instead, we would be receiving a refund of approximately $250.00.

The only explanation anyone can offer—and we have written to our representatives, Senators, the Treasury Department, even President Carter—is that married persons have more "disposable income" than single persons. This is because they are sharing their incomes. However, I think Congress would be wise to note that single persons living together are ALSO sharing their incomes, and thus have more disposable income than single persons living alone. Therefore, the only way to solve this problem is to allow married persons filing jointly the option of filing as if single. H.R. 3609 would allow this provision. We feel it is a step in the right direction, and we urge this committee to approve this bill.

The fact that the inequity has existed for years makes this situation even more urgent. People are always crying, "It isn't fair!", but rarely can anything be done about the situation in question. However, in this case there IS something that can be done. H.R. 3609 is the answer.

Living together has become a national phenomenon in the United States. However, we do not feel that living together should be rewarded, while at the same time married couples should be penalized. My husband and I felt we were responsible, mature, and cared enough for each other to make a firm commitment—and marriage was that commitment. It is absolutely horrendous that the income tax system is set up in such a way as to reward those who do NOT make a firm commitment and penalize those who do.

If you have any questions, I can be reached at work between the hours of 9:00 a.m.-12 noon and 1:30 p.m.-4:00 p.m., Eastern Time, weekdays. I am a secretary. My husband is a warehouseman. We have no children and live in an apartment. Like millions of other young couples, our "dream" is to someday own our own home and have children. At the rate inflation is going it's hard enough to make that dream a reality. Add to that this "marriage penalty", and you have a situation that is frustrating and unfair. We are aged 24 and 25, respectively, and vote in every election. We vote carefully, after having researched all the issues and candidates offered. We conserve gasoline by working close to our home. I am college educated and my husband is a trained Orthotic technician, in addition to his warehouseman abilities. We are as "typical" a young couple as you can get, and we find many of our friends (mostly young-marrieds, like ourselves), in the same predicament we are in insofar as their income taxes are concerned.

Please, approve H.R. 3609 so at lease ONE injustice can be eliminated. We do not wish to punish those who choose to live together—we simply would like equality in the eyes of the Internal Revenue Service]

Sincerely,

Mrs. LINDA M. HUFFENUS.

P.S.—Last year, I wrote an editorial to my local newspaper, The Courier-News. It was published and I received many phone calls from other young couples in the Somerville area applauding my action. Apparently, there are many, many people to whom the "marriage penalty" is an injustice.

THE JEWISH CENTER,
Princeton, N.J., March 27, 1980.

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: My name is Dr. Melvin Jay Glatt and I am Rabbi of the Jewish Center in Princeton, New Jersey, 57 Nassau Street. I represent some 400 families and a total of almost 1900 people.

I am writing you to urge the Committee on Ways and Means to look favorably on Millicent Fenwick's proposed bill (H.R. 3609) which is intended to eliminate the "tax on marriage." All who I represent feel very, very strongly that our tax laws should be changed to eliminate the inequity to people simply because they are married. The tax laws should be such to allow a two earning married couple the option of filing as if they are single. The way the tax laws are now married couples find themselves unfairly penalized in terms of tax return. This does not promote the important social and cultural value of marriage which is so necessary to preserve in our society today. Whatever you can do to further the acceptance of this proposed bill will be much appreciated.

Sincerely,

MELVIN JAY GLATT.

SAN JUAN CAPISTRANO, CALIF., *March 31, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR SIR: I am writing to you today about H.R. 3609, the bill to eliminate the tax on marriage.

I live with the young woman with whom I own my home, although I am not married to her. We are not married because our government will charge us an outrageous fee to do so. That fee would have been about $140 a month for us last year.

Most of the people of this nation are members of a religion that says that I am "living in sin." Most members of the government are also members of such religions—the President certainly is. Although I do not agree with this belief, I find it very odd that the government encourages me to live this way and will severely punish me if I do otherwise.

I have just completed my census forms which will be mailed tomorrow. Surely this census will make painfully clear that the majority of people in this country are adversely affected by the tax on marriage.

I wish to see this tax eliminated.

Sincerely,

THOMAS ALAN JONES.

San Juan Capistrano, Calif., *March 31, 1980.*

John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

Dear Sir: I am writing you today about H.R. 3609, the bill to eliminate the tax on marriage.

I live with the young man with whom I own my home, although we are not married. We are not married because our government charges an outrageous fee to people who marry. That fee would have been about $140 a month to us last year if we had been married.

Most of the people of this nation are members of a religion that says that I am "living in sin." Indeed, most members of the government of this country are members of such religions also. I find it very odd that the government, then, encourages me to live this way. Indeed, I will be severely penalized if I do otherwise. This is absurd!

I have just completed my census forms which will be mailed tomorrow. Surely this census will make painfully clear that the majority of people in this nation are adversely affected by the tax on marriage.

As an enfranchised citizen, I wish to see this tax eliminated.

Sincerely,

Gila Keithahn.

Long Valley, N.J., *April 10, 1980.*

John M. Martin, Jr.,
Chief Counsel,
Committee on Ways and Means:

I have recently been made aware of the bill Congresswoman Millicent Fenwick has sponsored to end 'Marriage Tax'. I am writing this letter to inform you that I am in full support of this bill.

In the past a one income family was the normal way of life, however, with the present economy situation and one income family is now obsolete. It is even getting difficult for many families to make it on two incomes much less with getting hit with the 'Marriage Tax'.

I urge you and others to deal with this issue immediately if not sooner.

Thank you,

Julie Kenia.

Elwood, Ind., *March 27, 1980.*

John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means, Longworth House Office Building, Washington, D.C.

Dear Sirs: My concern is about the unfair "tax on marriage." In my office we have prepared returns these past few seasons where couples have paid as much as $3,200 penalty for being married. On our own personal return, my husband and I paid $780 more than 2 single individuals would have paid.

It seems to me that each individual should have the "option" of filing the way that would be most beneficial to them even if that means doing away with filing status.

Married individuals have actually told me they prepare their own returns as two single individuals.

If we don't stop penalizing the young people for getting married, we are giving them all the more reason to continue the life style many of them have chosen.

My suggestion is to give married couples the "option" to file as single. Not that they would have to, but if it benefited them they should be allowed this option. They could decide between them about exemptions and deductions. This would eliminate the "December divorce, January marriage" thing that is also becoming popular.

Thank you for your concern in this matter.

Sincerely,

Carol J. Kleyla.

NEW YORK, N.Y., *March 28, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

Mr. JOHN MARTIN: I am pleased to learn that the House Ways and Means Committee has scheduled hearings on H.R. 3609 which would allow two-earner married couples the option of filing as if they were single, thus eliminating what has become known as the "marriage tax".

I am married. I have no children. My job, for better or for worse, is in New York, 350 miles from my husband and his job and our home. The costs of commuting and keeping up two residences are burden enough, without having to pay additional taxes because we are married. It infuriates me every time I read those "single/married" income tax graphs that magazines are so fond of publishing these days which show the money my husband and I would save if we were to divorce and simply live together. I refuse to do that. We love each other—some institutions ought to continue to be appreciated.

Family patterns are disintegrating in this country at a rapid rate. There are a thousand and one reasons for couples to separate rather than solve the problems and save a marriage. A tax incentive shouldn't be one of them.

Sincerely,

LEANNA LANDSMANN.

MILLBURN, N.J., *March 26, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I have been advised that hearings have been scheduled for bill H.R. 3609 which is supposed to correct tax inequities for two wage earner married couples, giving them the option of filing as if they were single.

For many years my husband and I have been treated unfairly by the present tax laws. Because we have been denied the option of filing as if we were single, the combined sum of both our earnings have brought us into a higher tax bracket and therefore we have been taxed at a higher rate.

For many years we have attempted to have this situation corrected, and sincerely hope that H.R. 3609 will finally eliminate the "tax on marriage", which discriminates against two wage earner married couples such as ourselves. Please see to it that this statement reaches the proper parties concerned with this matter on the Committee on Ways and Means.

Yours truly,

FLORENCE LEEDS.

STATEMENT OF HON. WILLIAM LEHMAN, A REPRESENTATIVE FROM THE STATE OF FLORIDA

Mr. Chairman, as a cosponsor of H.R. 3609, I wish to express my strong support for the elimination of the so-called "marriage penalty." This legislation, which was introduced by Representative Millicent Fenwick, would allow married two-earner couples to file as if they were single.

Our present tax system is based upon an outdated view of the American family. The two-income family is becoming the norm and not the exception. The income of a working wife is not just "gravy." It is more often than not essential to the economic survival of the family. Moreover, working parents must bear additional costs of child care. It is clearly unfair to charge these persons more in taxes than we would charge single persons of similar income.

Mr. Chairman, I understand how this discrepancy developed. Congress was concerned about income splitting within single-earner families and so established the different rates for married and single persons. Later we responded to complaints from single persons who felt they were being discriminated against. The result unfortunately has been unfair treatment of working married couples.

We must adjust our tax system to today's realities. Certainly in an age when family life is already threatened by numerous social pressures, the government should not be discouraging marriage.

I realize that any changes in our tax laws will be made with an eye towards balancing our budget. Some kind of tax cut, however, will have to be enacted next year since high rates of inflation continue to push people into even higher brackets. Expected revenue losses from the elimination of the "marriage penalty" could easily be accomodated within any tax reduction legislation.

I commend the committee for holding hearings on this complicated subject. Such an examination of the tax treatment of married and single taxpayers is long overdue. Perhaps no solution can satisfy all parties, but it is time we took some steps to redress the injustices suffered by so many of our working married couples.

OPA LOCKA, FLA., *March 31, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR SIR: When I was a young single man, I was frequently reminded that married couples had a tax advantage over me. That didn't bother me, as somehow it seemed logical and not inappropriate that a family should have some help.

Now that I am older and married, my wife and I both have to work our tails off just to keep up and do a few things, such as put our son through college. So what do we find? In addition to the thousands of dollars a year we have to pay in taxes, ever since the infamous Reform Tax Act of 1969 it has cost us literally thousands of dollars more, just because we are married and not just living together like all the hippies (over a million couples, at latest estimate?).

Of all the things we are angry at the government about, we really have a deep-seated bitterness about this one. There are really no words adequate to express our feelings about it. We urge the abolition of this outrageous inequity.

Yours very truly,

KENNETH O. LESSING.

AVENEL, N.J., *April 11, 1980.*

Mr. JOHN M. MARTIN,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: We definitely support Congresswoman Millicent Fenwick's bill to end the "Mariage Tax". We cannot understand why the government penalizes working couples who get married by imposing higher tax than single persons.

Good luck to Congresswoman Fenwick!

JOY G. LUCAS,
(And 31 others).

WASHINGTON, D.C., *March 31, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Washington, D.C.

DEAR MR. MARTIN: Please enter into the official record my support of H.R. 3609. Mrs. Fenwicks bill to eliminate the unfair Tax on Married Couples in the United States.

I am shocked that in our free society a Tax as unfair as this one is allowed to continue. As a wife and mother I find it abhorrent that those persons who wish to contribute to the spiritual life of our country by marrying and raising children as so dramatically penalized. I look forward to the passage of Mrs. Fenwick's resolution and I will gladly amplify my written comments with oral testimony should I be called upon to do so.

Sincerely,

NANCY LYNNER.

GLENDALE, WIS., *March 31, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Bldg., Washington, D.C.

DEAR MR. MARTIN: I understand that hearings have been scheduled on April 2nd and 3rd concerning Bill No. HR3609 to eliminate the tax on marriage. I'm writing to express my extreme displeasure (these words are mild) concerning the marriage tax I've been paying. My wife has modest earnings and some interest on savings which are being taxed at an unfairly high tax rate. In my opinion this has been another example of government's insensitivity to the rights of taxpayers. Each taxpayer should be treated as an individual for purposes of both income and expenses and I urge the Committee to recommend passage of Bill 3609.

For your information, I have written several times a year to my senators and representative in Washington, as well as other people in a position to make the change such as Jimmy Carter. I always get back the same canned response, "We know it's unfair but there isn't anything we can do about it, because there are other things more pressing to be dealt with." And you talk about a credibility gap in this country.

Thank you for your consideration of my request.

Very truly yours,

ROBERT A. MAAS.

MIDDLETOWN, N.J., *March 18, 1980.*

COMMITTEE ON WAYS AND MEANS,
U.S. House of Representatives, Longworth House Office Bldg., Washington, D.C.

LADIES AND GENTLEMEN: We are writing in connection with the public hearings being held on April 2 and 3, 1980 on legislative proposals relating to the comparative income tax treatment of married couples, single persons and heads of households.

Attached to this letter is a copy of our letter to Congressman James Howard. The same letter was sent to Senator Harrison Williams and Senator Bill Bradley. Also attached are their responses to same.

We just prepared our 1979 income tax returns and we calculated that if we had filed as single persons (taking standard deduction and not itemizing), we would have saved $1,200.00. During the last year we purchased a house, so we were able to itemize. Our calculations indicate that if we had filed as single persons owning the house, we would have still saved $190.00. The house may have helped but either way we were penalized for being married.

We are urging that legislation be passed giving married couples the option of filing as single persons or equalizing the income tax treatment in some manner.

We would not like to have to get a divorce to ease our tax burden!

Sincerely,

JOAN MACKENZIE.

Enclosures.

MIDDLETOWN, N.J., *September 12, 1979.*

Hon. JAMES J. HOWARD,
Congressman, Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN HOWARD: We are writing to you in order to speak out about the Federal Tax System and its discrimination against married working couples.

An article in the New Jersey Law Journal on August 2, 1979 spoke about a bill that Senator Charles Mathias, R-Md., Senator Roger Jepsen, R-Iowa, and Representative Millicent Fenwick, R-N.J. introduced that will call for an end to the bias against two-earner couples. Senator Mathias said it "would permit a married person to file his or her tax return individually and thereby calculate the tax owed on the tables applicable to single individuals."

A recent article in the New York Times yesterday, September 11, 1979, reported about a couple from Ellicott, Maryland who have been getting divorced and re-married in order to take advantage of tax rates for single persons. The couple stated that if they had filed as a married couple last year, they would have paid $2,800 more in taxes above the amount of $11,800 they paid as single Adults who earn $30,000 each.

We, as a two-earner couple, figured out that if we had filed as single persons last year, we would have paid almost $1,200 less on our incomes of $28,000 and $12,000. It makes us wonder if we should get a divorce! As Mrs. Fenwick said in the article in the Law Journal, "This tax penalty discourages marriage".

Congressman Howard, our opinion on this bill is PASS IT and, as Senator Mathias said, the tax rate will be equalized "so that men and women who happen to be married will not have to pay more taxes than single people."

Sincerely,

WILLIAM MACKENZIE.
JOAN MACKENZIE.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., September 20, 1979.

WILLIAM AND JOAN MACKENZIE,
2 Pelican Road, Middletown, N.J.

DEAR MR. AND MRS. MACKENZIE: Thank you very much for your recent letter regarding the discriminatory marriage tax on working couples. I appreciate having the benefit of your thoughts.

I am sure you will be pleased to learn that I recently cosponsored legislation introduced by Rep. Fenwick which would revise the tax system so that married, two-income couples have the option to use the singles' tax rate. The proposal would put 38 million Americans in lower tax brackets and would amount to a $3.5 to $6 billion tax cut for double-income families. The bill is identical to one sponsored in the Senate by Charles Mathias and enjoys the support of 20 cosponsors in that body and 170 cosponsors in the House of Representatives. The House cosponsors are in the process of organizing a letter to the chairman of the Ways and Means Committee urging that hearings on the proposed legislation be held during this session of Congress.

You may be certain that I will continue my efforts to relieve the tax burden on working couples.

Sincerely,

JAMES J. HOWARD,
Member of Congress.

U.S. SENATE,
Washington, D.C., September 18, 1979.

WILLIAM AND JOAN MACKENZIE,
2 Pelican Road, Middletown, N.J.

DEAR FRIENDS: Thank you for your communication regarding the marriage penalty.

I share your concern about the effects of the tax code upon married individuals with separate incomes. The code should not penalize persons on the basis of marital status.

Legislation, which I am cosponsoring, has been introduced to allow married persons to use the single person tax tables if it is advantageous for them to do so. The measure is now pending before the Senate Finance Committee, where I hope it receives speedy and favorable attention.

I very much appreciate having the opportunity to respond to your inquiry about this vital issue. If I may be of assistance to you in the future, please do not hesitate to contact me.

With best wishes,

Sincerely,

HARRISON A. WILLIAMS, Jr.

U.S. SENATE,
Washington, D.C., October 5, 1979.

Mr. & Mrs. WILLIAM MACKENZIE,
2 Pelican Road,
Middletown, N.J.

DEAR MR. and MRS. MACKENZIE: I want to thank you for contacting me to relate your concern over discriminatory income tax policies. I appreciated receiving
It has become clear that current income tax laws often discriminate against
your comments.
"two-income" married couples by requiring them to pay higher taxes, individually or jointly, than single workers earning the same income or married couples with only one working spouse. I share your concerns over this inequitable situation, which provides disincentives to working women and places a strain on many New Jersey families.

I have decided to cosponsor a bill introduced by Senator Mathias, S. 336, which attempts to deal with the marriage tax penalty by permitting married couples to file separate income tax returns and determine their tax at the same rate as single persons. Although I understand that the Treasury Department may resist such a reform in light of a small revenue loss which would result, I do not believe that this is sufficient reason for failing to remove such a great injustice in our nation's tax system. I intend to support S. 336, and I look forward to future hearings on the bill before the Finance Subcommittee on Taxation and Debt Management.

Again, thank you for your correspondence. Please continue to keep in touch in the future.

Sincerely,

BILL BRADLEY,
U.S. Senator.

SUMMIT, N.J., *April 1, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I would like to go on record as a citizen in favor of eliminating the unfair tax on the income of two-earner married couples.

It strikes me as being not only inequitable when compared to the single taxpayer but almost discriminatory against married working individuals. Surely the married couple should be given the option of filing a separate return as a single and thus be given the same tax advantage as the Single Taxpayer.

Very truly yours,

(Mrs.) JEANNE M. MAGEE.

DALLAS, TEX., *March 29, 1980.*

HON. JOHN M. MARTIN, JR.: Please support bill H.R. 3609 and eliminate the unfair tax treatment of two earner married couples.

We have never seen or heard of any justification for this tax "on marriage" and feel it is contributing to many singles living together.

Yours sincerely,

LOIS and M. B. MAGNESS, Jr.

STATEMENT OF HON. LARRY P. MCDONALD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

One would have to be leading an extremely sheltered life not to have noticed that taxes—federal, state, and local—often constitute both the largest and the fastest growing item in the personal or family budget.

"Big Government" now consumes over one-third of all the goods and services produced in the entire country. One hears in Washington that the people "demand" all these government "services", so naturally taxes must go up—and up, and up.

Frankly, I doubt that the public is really clamoring for "Big Government" with its ever-increasing harassment and even oppression. Our really great need is to cut back on the tax "take" and thereby cut back "Big Government". The benefits greatly outweigh some localized and temporary pain.

Under present circumstances, however, it is natural that each individual will seek what relief he can. Current protest is directed at tax inequities based upon marital status. At present, federal tax law "penalizes" both single persons and married couples, both of whom are working.

There is a good chance this sort of inequity will be eliminated by Congress this year due to the overwhelming support various pieces of legislation have received such as the Honorable Millicent Fenwick's bill, H.R. 3609, and my bill, H.R. 2553, the Individual Tax Return Equity Act.

It is certainly my hope that this committee will be persuaded by the support these bills have received and act favorably on them.

Congress has never intended to discriminate among taxpayers by marital status—but that is certainly the way things have worked out. Most individuals, no doubt, are less interested in how this came about than they are in how the situation can be remedied.

The legislative history of this particular quirk of tax law does illustrate, however, how the road to perdition can be paved with good intentions.

Prior to 1948, there was only one "tax unit", the individual, and only one tax rate or schedule. This had the effect of making it advantageous to spread family income around to as many family members as possible. This was easier to do with "unearned income" than with wages and salaries—thus discriminating against people with "earned income". Furthermore, many states had community-property laws for married couples which gave married people in those states a tax advantage over couples in other states.

The Revenue Act of 1948 introduced the "joint return", extending income-splitting provisions of community-property states to all—and introducing a second tax schedule.

By 1951, Congress had been made aware that there were many households consisting of only one parent and his or her children, or of one provider and related dependents. A "head of household" classification was introduced with a tax rate set midway between that for individuals and married couples filing a joint return. We then had three tax schedules.

In 1954, the "head of household" definition was extended to include persons supporting their parents, even though they did not live together in the same home. Congress also added yet another status, that of "surviving spouse", meaning widow or widower; where a "surviving spouse" had dependent children, the tax rate for joint returns could be used.

By this time, the law had made it possible for a single person to be paying as much as 42 percent higher taxes than a married person. So the Tax Reform Act of 1969 cut this down to a maximum of 20 percent.

Single individuals naturally resent paying what appears to be a special tax on being single. However, many working couples pay higher taxes than they would pay if they were not married. This latter phenomenon has the result of breaking down the family structure in society; an end we all clearly want to avoid.

In just this short review it is easy to see how this entire area could become very confused and unequal though such was never intended. The solution clearly is to reverse certain tax changes which have proved ineffective and inappropriate in meeting the end they set out to accomplish and to pass bills H.R. 3609 or H.R. 2553, or a combination of the two.

The bill H.R. 3609 has the effect of eliminating the "tax on marriage" which many couples pay due to the use of a variety of tax schedules. It does so by allowing married couples to be treated as unmarried individuals in certain circumstances in the tax law. H.R. 2553 remedies the same problem and also corrects the inequities to single individuals. The increased rates they pay for just being are reduced by altering the tax schedules for them. The essence of the bill is that similar incomes be treated equally under law. The current tax rate system clearly is discriminatory and violates the principle of equality before the law.

Certainly these bills are not the only solution to this involved area of the tax code, but they are an excellent start at reform.

Thank you.

STATEMENT OF MICHAEL J. MCINTYRE, DETROIT, MICH.

Any tax system that cares about fairness does not permit taxpayers to elect for themselves how much tax they should pay. This Committee should be skeptical, therefore, about a proposed solution to the tax or marriage problem founded on an election between a joint and an individual filing rule. A touch of skepticism about the Fenwick bill, moreover, will be well rewarded. On examination, we find that it offers a substantial tax advantage to taxpayers least in need of relief while exacerbating all of the traditional problems that arise from the economic phenomenon of income sharing between spouses. Despite some surface appeal, the Fenwick proposal of voluntary joint returns is the worst of all possible solutions to the tax on marriage problem.

Since 1948, Congress has attempted to build a fair system of family taxation on the foundation of the joint return. The joint return rule is fundamentally sound. It reflects the common understanding that most married couples pool a substantial part of their individual income sources. It has been defended on grounds of tax theory [1] and on practical grounds [2] by commentators sensative to

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[1] McIntyre and Oldman, "Taxation of the Family in a Comprehensive and Simplified Income Tax," 90 Harvard Law Review 1573 (1977).

[2] Z. Giraldo, "Tax Policy and the Dual-Income Family: The 'Marriage Tax' and Other Inequities," Center for the Study of the Family and the State, Institute of Policy Sciences and Public Affairs, Duke University (1978); P. Musgrave, "Women and Taxation," Paper Presented to Congress of International Institute of Public Finance, September 1979.

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the requirements of a fair tax system and the importance of eliminating structural biases against married women from the tax code. With all due respect to those with different views, I find the critics of the joint filing rule to be either misinformed or insensitive to the need to make fairness the number one priority of the income tax.

In recent years, the case for individual filing has been argued with enthusiasm by a number of economists. Three false claims are advanced in favor of individual filing:

First, the claim is made that with individual filing we can end the tax on marriage. This claim obviously is incorrect; joint filing with full income splitting yields a tax regime without a marriage penalty. Because of the alimony deduction, moreover, individual filing always produces a very substantial marriage penalty.[3]

Second, joint filing is said to discourage married women from entering the labor force. A recent economic study of the effect of the tax system on the participation of married women in the labor force demonstrates the falseness of that claim.[4] In light of the tremendous increases in participation of married women in the labor force over the past two decades, no one should be surprised by this result.[5]

Third, individual filing is said to simplify administration. The idea is that the old income shifting problems that plagued the income tax before 1948 can be avoided by repealing for tax purposes the community property laws of Arizona, California, Louisiana, Idaho, Nevada, New Mexico, Texas, and Washington. This claim is patently false. To eliminate the community property laws, complex legislation would be needed for determining which spouse would be taxable on investment income earned on community property. Moreover, well-known and not-so-well-known devices abound for shifting income between spouses. We have only to look to Canada to see the kinds of draconian rules that are necessary to even hope to administer a tax system based on individual filing.[6]

Whatever the defects in the case for individual filing, its proponents at least are attempting to muster respectable arguments in support of their position. The same cannot be said for the advocates of voluntary joint returns. Joint filing is either right or wrong. If it is right, then voluntary individual filing gives an unwarranted tax bonanza to two-job couples. If it is wrong, then the one-job couple is unfairly using the spouse who does not work in the labor market as a tax shelter.

One should not see voluntary joint returns as a solution to any of the problems of marital taxation. All the income shifting problems associated with individual filing would remain. The alimony tax on marriage would remain. The equal treatment of equal income spuses would end. The perception, albeit incorrect, that the spouse working at home is a tax shelter would continue. The incorrect perception that single persons are unfairly treated would continue. And agitation for a tax gimmick for one-job couples would begin.

What can Congress do in a positive way to alleviate the tax on marriage problem? A return to the percentage standard deduction, by eliminating for many taxpayers the tax on marriage created by the different zero bracket amounts for single and married persons, would help. A small tax deduction for two-job couples also would help.[7] The most important step, however, would be the adoption of a long-term strategy for reducing the rate of progression applicable to middle income taxpayers and for moving toward a rate structure for married couples that reflects the reality of income splitting. The rate schedule adopted in the 1969 tax act implicity incorporated a premise of about an 80/20 split between the partners in a marriage. The changes made by the 1978 tax act implicity assumes an 85/15 split for middle income couples.

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[3] For discussion, see McIntyre, "Prologomena to Future Arguments for Individual Filing in the Personal Income Tax," Tax Notes, June 18, 1979, pp. 763–67.

[4] J. Leuthold, "Taxes and the Two-Earner Family: Impact on the Work Decision," Public Finance Quarterly (April 1979).

[5] For a summary of the economics literature on this point, see McIntyre, Individual Filing in the Personal Income Tax: A Prologomena to Future Discussion," North Carolina Law Review (forthcoming).

[6] For a sample of the problems of income shifting and the tools of the Canadian tax authority in combating it, see Studies of the Royal Commission on Taxation, Number 10: Taxation of The Family (1964), pp. 1–42.

[7] For a description of a workable deduction for two-job couples based on pre-1978 rate structure. See, McIntyre, "Taking Account of Marriage," People & Taxes, October 1977, pp. 3–6.

Although the exact split between spouses is virtually unknowable, these implicit estimates obviously are nonsensical. Virtually all spouses share about equally in the basics of the family budget—food, shelter, insurance, vacations, utilities, perhaps even clothes and transportation. Almost any reasonable estimate about family sharing patterns would eliminate much of the tax on marriage. A 50/50 estimate built into the rate schedule would end the tax on marriage completely; a 40/60 rate schedule would make the problem trivial for most married couples.

A movement toward further income splitting probably would arouse the single taxpayers lobby. In 1969, that group convinced the Congress that a single person should pay no more than 120 percent of the tax paid by two married persons with the same total income. No good argument consistent with progressive taxation can be made for that position. If Congress wants to solve the problems of family taxation, it must at some time stand up to the single taxpayers and tell them their case has been discredited.[8] In the interim, the first duty of this Congress is to preserve the foundation of a fair system of family taxation, the joint filing rule.

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[8] The movement toward fuller income splitting need not cause most single persons to pay higher taxes if the rate of progression for middle income taxpayers is reduced and tax preferences favoring married taxpayers are curtailed. According to a Brookings Institution estimate, full income splitting, accompanied by otherwise desirable changes in the tax base and the rate structure, would produce no increase in taxes for an overwhelming majority of single tapayers. *See* McIntyre and Oldman, "Treatment of the Family," in comprehensive Income Taxation (J. Pechman, ed. 1977).

COMPARISON OF TAX BURDENS ON FAMILY INCOME: JOINT RETURN RATES ON TOTAL VS. SINGLE RATES ON EACH PORTION OF 75/25, 50/50, 60/40, AND 100/0 SPLITS—TAXABLE YEARS BEGINNING AFTER DEC. 31, 1978

Taxable family income	Tax under joint return rates	Tax under singles rates 100/0 split	Percent change 100/0	Tax under singles rates 80/20 split	Percent change 80/20	Tax under singles rates 50/50 split	Percent change 50/50	Tax under singles rates 60/40 split	Percent change 60/40	Tax under singles rates 75/25 split	Percent change 75/25
$500	$70	$70	0	$70	0	$70	0	$70	0	$70	0
$1,000	140	140	0	140	0	140	0	140	0	140	0
$1,500	210	218	+3.8	212	+.9	210	0	210	0	210.50	+.2
$2,000	280	298	+6.4	290	+3.6	280	0	282	+.7	288	+2.8
$4,000	598	656	+9.7	624	+4.3	596	−.3	602	+.7	616	+3.0
$8,000	1,314	1,450	+10.3	1,348	+2.6	1,312	−.1	1,318	+.3	1,332	+1.4
$12,000	2,139	2,423	+13.3	2,187	+2.2	2,068	−3.3	2,088	−7.4	2,151	+.6
$16,000	3,081	3,599	+16.8	3,147	+2.1	2,900	−5.9	2,933	−4.8	3,079	−.06
$20,000	4,169	4,959	+18.9	4,255	+2.1	3,830	−8.1	3,873	−7.1	4,139	−.7
$26,000	6,041	7,239	+19.8	6,113	+1.2	5,390	−10.8	5,486	−9.2	5,924	−1.9
$38,000	10,828	12,804	+18.2	10,516	−2.9	9,238	−14.7	9,346	−13.7	10,109	−6.6
$50,000	16,444	19,332	+17.6	15,747	−4.2	13,698	−16.7	13,933	−15.3	15,112	−8.1
$80,000	32,314	38,017	+17.5	31,511	−2.5	27,664	−14.4	28,096	−13.0	30,351	−6.1
$100,000	44,004	51,617	+17.3	42,976	−2.3	38,664	−12.1	39,224	−10.9	41,691	−5.3
$180,000	95,744	107,497	+12.3	94,121	−1.7	89,634	−6.4	90,049	−5.9	92,579	−3.3
$200,000	109,344	119,887	+9.6	107,327	−1.8	103,234	−5.6	103,514	−5.3	105,829	−3.2
$500,000	316,724	329,887	+4.2	313,114	−1.1	312,994	−1.2	312,996	−1.2	332,994	−1.2

MAR VISTA, CALIF., *March 28, 1980.*

DEAR MR. MARTIN. We wish to complain to you about the "marriage tax", whereby married people are paying more taxes than two un-married people. This is anti-family and is harming the American society. These days we need to do all we can to preserve and encourage the family, a strength for all of us.

BARRIE and JUDY MERCER.

STATEMENT OF HON. ROBERT H. MOLLOHAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. Chairman, today your Committee is beginning hearings on the tax treatment of married individuals, single persons and heads of households. As a cosponsor of one of the proposals to end the so-called "tax on marriage," I would like to briefly comment on this legislation and share with you and the other members of the Committee some of the concerns my constituents from the First Congressional District of West Virginia have expressed to me.

In the late 1950's, the United States started experiencing a change in lifestyles. In many American families, wives began to join the labor force. In the 1970's, we saw the women's movement flourish and more and more married women began seeking career fulfillment. By 1977, married women comprised 48 percent of our work force. This is a startling figure when you consider that in the 1950's, married women made up only 18 percent of the work force.

Changing social and economic conditions have made the typical one wage earner family of the 1950's a thing of the past. More and more married couples are finding that two incomes are absolutely necessary to make ends meet. The two wage earner family is no longer a minority—its becoming a majority. In fact, the Internal Revenue Service has estimated that more than one-half of all taxpayers are married, and at least one-half of all married couples are two-earner couples. One-quarter of all taxpayers—38 million Americans—are being penalized, under our present system of taxation, for their marital status. It makes no sense to me to place this undue tax burden on some of the hardest working families.

From a standpoint of ethics, is it ethical for our tax system to encourage people to live together without being joined in matrimony? That's what we're doing. The number of households which are shared by unrelated individuals of the opposite sex doubled between 1970 and 1977 because young working couples are discovering that for tax purposes, it's cheaper to live together than it is to be married. In addition, the divorce rate has doubled in part because many married working couples are realizing that getting a divorce is a simple solution to the tax penalty. Is this the kind of lifestyle our tax system should be encouraging in the United States?

Let me underscore this point by quoting from two of the many letters on this subject I have received from constituents.

"Why not allow two-earner married couples the option of filing as if they were single? This would not be special relief—just simple justice. Why get married when you must take on more taxes? This unfair burden has gone long enough. It's corrupting our family system and the American way of life."

Frank L. Gaich, Follansbee, W. Va.

"At a time such as this with rampant inflation threatening to weaken such basic institutions as the American home and marriage, why must we continue to suffer with a 'tax on marriage'?"

Jack Kaufman, Wheeling, W. Va.

I could not agree with my constituents more on this point. The marriage tax penalty is encouraging this trend.

With a simple change in the law, such as the marriage tax legislation before you proposes, we would be ending one of the most senseless and glaring inequities in our present system of taxation. We would be encouraging a necessary and a vital return to the institution of marriage, which is the bedrock of the strong family life that made this country great. A strong family life must also be the social institution upon which this country can depend in the future.

In closing, Mr. Chairman, let me quote from another constituent letter: "In these times of double digit inflation, it takes two people in a household working to be able to raise a family and make ends meet. However, under present ax laws, married people are being penalized when both spouses work outside he home. These people are already paying full FICA on their wages and they eed and deserve a break in the income tax."

James R. Ray, Glen Dale, W. Va.

I, therefore, urge you to give this subject your full and thorough consideraion and favorably present to the House of Representatives a proposal to end his so-called "tax on marriage."

FALLS CHURCH, VA., *March 28, 1980.*

OHN M. MARTIN, Jr.
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR SIR: I am writing to express to you my strong support for House Bill 3609, sponsored by Rep. Fenwick, to eliminate the so-called "tax on marriage". My wife and I both have incomes and we feel it is exceedingly discriminatory to penalize us because we choose to live as a married couple. The institution of marriage simply does not bear the same societal importance as it used to in our nation, and should be divorced from the tax laws at this time. I work for the District of Columbia as a Social Service Representative with the Department of Human Services and my wife, Dixie Ann Morse, is an instructor at the George Washington University. My use of District of Columbia letterhead is a convenience. I, in no way, represent the District on this matter. I am simply stating a personal and deep felt opinion. I hope it will have some influence over you in your deliberations on the Ways and Means Committee. Thank you very much.

Yours truly,

JOHN A. MORSE.

PRINCETON, N.J., *March 26, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR SIR: I am a research physicist at Princeton University's Plasma Physics Lab. This letter is written in support of H.R. 3609, Rep Millicent Fenwick's bill to eliminate the "tax on marriage," which presently exists in our tax system. I believe, with Rep. Fenwick, that the change in the makeup of the labor force has left the tax system out-of-date, serving as a deterrent to getting married, and (effectively) a penalty for being married.

Sincerely,

HARRY E. MYNICK.

STATEMENT OF REV. G. WILLIAM SHEEK, OFFICE OF FAMILY MINISTRIES AND HUMAN SEXUALITY, NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE USA

My name is William Sheek. I am director of the Office of Family Ministries and Human Sexuality of the National Council of Churches of Christ in the USA. The National Council of Churches of Christ is a cooperative agency of thirty-two Protestant and Orthodox bodies having an aggregate membership of approximately 40,000,000 in the United States. I do not purport to speak for all members of communions which are constituents of the National Council of Churches, but this testimony is endorsed by the Executive Committee of the National Council of Churches Commission on Family Ministries and Human Sexuality.

The Commission which is comprised of representatives of constituent bodies functions under a mandate to strengthen marriage and familial living through advocacy of adequate laws and sound policies and through programs of education, counseling, guidance, training, and leadership development.

The National Council of Churches has always been concerned about the quality of family life. How certain economic factors affect families by contributting to family stress and malfunction is a major component of this concern. NCC policy urges that all economic institutions be judged by their impact on the family.

An assessment of the present federal income tax code indicates that there are sufficient discrimination and inequity against married tax payers to warrant legislative change. There are no acceptable reasons that tax payers should be financial penalized for being married. Nor are there any acceptable reasons that the federal tax income code should discourage marriage.

The Executive Committee of the National Council of Churches Commission on Family Ministries and Human Sexuality strongly urges that the issue of tax reform for married couples be addressed in light of its present negative economic impact on the well-being of families in which both spouses are employed.

STATEMENT OF THE NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.

The National Federation of Business and Professional Women's Club's, Inc., which represents over 165,000 working women nationwide, wholeheartedly supports efforts to eliminate the "marriage tax" penalty from our current tax system. We believe that the "marriage tax" places an unfair burden on a substantial number of working women and their families.

The "marriage tax" is the additional tax that a two-earner couple must pay to the government above what they would pay if they were single with the same incomes. The "marriage tax" results because the current system does not distinguish between one- and two-earner couples and both must file a joint return. The two-earner couple must aggregate their income and pay at a higher tax rate than if they were two single persons with similar incomes.

The "marriage tax" affects millions of American families at all socio-economic levels. Recent estimates indicate that approximately 19 million couples—38 million people—pay a marriage tax to the United States government. The "marriage tax" affects most two-earner couples and generally goes into effect when the spouse with the lower income earns at least one-fifth of the couple's total income.

There is a general misconception that the marriage tax only affects higher income couples. This is simply not true. While higher income couples pay a higher dollar amount in extra taxes, lower income couples have a greater percentage increase in their total tax bill. For example, a low income couple where each spouse earns $5,000 pays an additional $202 in taxes over the amount they would pay if they were single. This is a 40 percent increase in their tax liability. For a higer income couple in which each spouse earns $20,000, the increase in tax liability is $2,674, an increase of 24 percent.

Our tax system should be neutral with respect to gender and marital status. But, as it is currently operating, there is a clear bias toward the "traditional" family where the husband works and the wife is a full-time homemaker. The underlying assumption on which this bias is based is that "the woman's place is in the home, not the job market." The irony of this is that the "traditional" family is no longer the norm in America today. For a variety of reasons, one of the fastest growing groups in the labor force is married women. More than half of all married women now work outside the home. The number of married women in the labor force has increased more than 25 percent since 1970. This change can be traced to social factors which make it more acceptable for women to work outside the home and which encourage women to continue their careers after marriage. But, economic necessity is the most important reason for the increases in the numbers of married women remaining or entering the labor force. For the average American family, inflation and the dramatic increase in the cost of living make it necessary for both spouses to work to maintain a decent standard of living.

The "marriage tax" discriminates against working women and their families. It is distressing to note that the marriage tax penalty is greatest when spouses have equal or nearly equal incomes. The tax system is penalizing those women who are successful in the labor force in achieving pay equity. It is rewarding the family unit where the wife does not work or where her income is marginal.

It is simply unjust to continue to treat one- and two-earner couples the same in the tax system. When both spouses work, there are additional expenses which often cannot be deducted, such as transportation, clothing and child care costs. Both working spouses pay social taxes, often with no additional benefit to the second earner or family unit. And, the tax system which is not indexed to reflect inflation doubly penalizes the two-earner couple. They are paying progressively higher income taxes when their real wages are not increasing and a higher marriage tax as their taxable income goes up.

We support H..R 3609, introduced by Representative Millicent Fenwick, to allow married persons who work to file as if they were single. This appears to be the simplest way to eliminate the marriage tax without shifting the burden to another group of taxpayers such as one-earner couples or single persons. There is no question that this change in the law would result in some losses to the Treasury, but we feel that it is imperative that all citizens be treated equitably by our tax system.

There should be no "luxury tax" on marriage. The tax system should not be discouraging working persons from marrying or encouraging divorce for financial gain. We must not allow policies to continue which encourage the disintegration of the American family. The elimination of the "marriage tax" would show that the American government is serious in its commitment to eliminating discrimination against women and to the survival of the modern American family.

NATIONAL RETIRED TEACHERS ASSOCIATION,
AMERICAN ASSOCIATION OF RETIRED PERSONS,
Washington, D.C., April 3, 1980.

Hon. AL ULLMAN,
Chairman, Committee on Ways and Means, Longworth House Office Building, Washington, D.C.

DEAR CHAIRMAN ULLMAN: The National Retired Teachers Association/American Association of Retired Persons are pleased that the Ways and Means Committee has decided to consider the very complicated subject of the tax treatment of married, head of household and single taxpayers on April 2, and April 3, 1980. While we look forward to the opportunity to study the record of this hearing, we would like to describe, for the record, some of the problems that many of our 12.7 million membesr have that are relevant to this subject.

Our Association realizes that any choice for altering the present taxation system by aiding one group will probably adversely affect a different group. Value judgments as to what types of lifestyles we seek to encourage, discourage, or remain neutral on are difficult to make. Also, action by your Committee in this area could have accidental, secondary, or unintended impacts on groups of people. Many of these issues are age-neutral. Although we do hear from our members about the "marriage penalty" and other assorted problems, we do not believe many of these concerns are unique to older Americans. However, we do feel that any proposed solution to the "marriage penalty" problem should not in turn penalize single people in an effort to prevent revenue losses.

There is one item covered by this hearing however, in which older people have a disproportionately large interest. We believe that there is a gap in the tax code classification system that causes harm to specific groups of people—widows and widowers and we would like to bring this problem to your attention.

A widow or widower, after the first year following the spouse's death, returns to the tax rates for single people, unless he or she is able to qualify as a "head of household" (which under present law is difficult because there is generally no dependent child in the home). However, the financial condition of the widow and widower (given present demographic and income conditions, we are generally dealing with widows) is very different from that of a single person.

A widowed individual often is unable to constrict her expenditure requirements to her newly reduced income status. Her home requires no fewer expenditures than it did when the spouse was alive. Significantly, costs for utilities at the home are continually rising—a direct contradiction to the theory that expenses for the widow should decline at her husband's death. Since the needs of the widow have developed over a period of years in which she was married, her position differs from that of a person who remained single and had a relatively constant pattern of expenditures.

Our Associations believe that a system that taxes a widow in the same manner in which it taxes someone who was forever single neglects a significant displacement in the widow's economic situation. We feel that the Ways and Means Committee should consider the needs of this class in the course of its deliberation on means to treat various types of taxpaying units.

The unique status of the widowed taxpayer can be recognized in a number of ways, which our Associations recommend for your consideration. Various options are as follows:

1. *Extend head of household treatment to a widowed individual.*—Although this remedy would alter somewhat the dependent requirement of the present head of household grouping, it would result in an equitable treatment for a widowed person. Because of the unique nature of the widowed person's financial position, consideration should be given to applying the head of household schedule in the determination of a widow's tax liability.
2. *Extending the period for allowance of joint return schedule use.*—Because of the sudden dislocation between a widow's income and expenditure needs, and because those expenditure needs remain relatively constant before and after widowhood, the joint schedule is an appropriate measure of a widow's tax liability.
3. *Allowing an additional personal exemption for a widowed person.*—As a recognition of a unique burden that is suddenly placed on a widowed individual, an additional personal exemption might be granted to that person.

Our Associations, by offering these options, are merely suggesting potential solutions to a significant problem. The point which we would like to articulate through this statement is the existence of an unfavorable and inequitable system of taxation of widowed individuals. The tax code is designed to address the varying circumstances encountered by single, married and head of household taxpayers. We suggest that similar consideration be given to those who are widowed.

Sincerely,

PETER W. HUGHES,
Legislative Counsel.

PORTLAND, OREG., *March 29, 1980.*

COMMITTEE ON WAYS AND MEANS,
U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR COMMITTEE MEMBERS: We would like to express our support for H.R. 3609 It is an equitable solution to the unbalanced taxation that afflicts dual-income married couples.

Mark is employed as a broadcast engineer for Golden West Broadcasting and Karen is a public relations representative for First FarWest Companies/National Hosptial Association here in Portland. As you know, under present law we do not have the option of filing separate returns to be taxed as individuals. However, dual-income cohabitants do enjoy this advantage. We urge you to give H.R. 3609 the prompt attention and consideration it deserves This tax reform measure is urgently needed as more and more women enter the job market.

Sincerely,

KAREN R. NEWELL.
MARK L. NEWELL.

NEW YORK COUNTY LAWYERS' ASSOCIATION,
New York, N.Y., March 26, 1980.

Hon. AL ULLMAN,
House Ways and Means Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. ULLMAN: The Special Committee on Women's Rights of the New York County Lawyers' Association reiterates its strong interest in, and support of, the above legislation which, it is hoped, will end the current discriminatory taxation of married wage earners. (Please see attached letter dated April 16, 1979.)

Introduced by Representative Fenwick and cosponsored by 208 members of the House of Representatives, this bill surely deserves positive action following hearings before your Committee on April 2–3, 1980.

Yours very truly,

MARGARET H. MCDOWELL,
Chair, Special Committee on Women's Rights.
ROCHELLE M. CORSON,
Chair, Subcommittee on Tax Inequities.

NEW YORK COUNTY LAWYERS' ASSOCIATION,
New York, N.Y., April 16, 1979.

Hon. AL ULLMAN,
House Ways and Means Committee,
U.S. House of Representatives, Washington, D.C.

DEAR MR. ULLMAN: The Special Committee on Women's Rights of the New York County Lawyers' Association has instructed us to convey to you its strong interest in, and support of, legislation that will end the present discriminatory taxation of married wage earners.

Although the current taxation of married wage earners superficially penalizes men as well as women, its economic effect is necessarily to discourage married women from seeking gainful employment outside the home and to burden the family unit most heavily when they do so. If a woman stays home, the tax authorities assign no economic value to her services and they tax the family unit as though the husband alone was productive. If a married woman, however, works for wages, not only does the family lose the benefit of her unpaid services, but the money the third parties pay her for such services is taxed at the highest bracket which the husband's income alone reaches. To compound the injustice, the tax law takes no cognizance of the additional outlay needed to earn that income, like carfare or office clothing. Moreover, the higher a woman's income and the more nearly it approximates that of her husband, the greater the disproportionate tax a married couple pays as compared with single wage earners.

In short, the tax law discourages employment by married women outside the home in four ways: First, by treating a homemaker's services as taxable only when performed with strangers for wages; second, by ignoring the cost to the family unit for replacing the services previously performed by the woman at no cost as, for example, by the purchase of restaurant meals; third, by not recognizing in any way that the production of income by two wages earners involves heavier expenses than where only one is employed; and fourth, by taxing the additional dollars a married woman brings home at premium rates.

Because inflation has pushed what formerly would have been considered middle income, middle-class, wage earners into top income brackets, business or professional women often find that each dollar they earn is worth only fifty cents. Obviously, many women are discouraged, or even blocked, from employment by their inability to cover the additional expenses dependent on such employment with the shrunken dollars left by treating their wages as additional income of their husband's.

In an era which prides itself on recognizing the unfairness of discriminating against any group because of status and with a government which has done much to eliminate such past discrimination, we believe that the perpetuation of the present discriminatory tax on married couples is indefensible. We hope that we can count on you to help amend the law so as to end this unfair treatment of married taxpayers and, in particular, of the married woman wage earner.

Yours very truly,

MARGARET H. MCDOWELL,
Chairperson,
Special Committee on Women's Rights.
CECELIA H. GOETZ,
Chairperson,
Subcommittee on Tax Inequities.

STATEMENT OF HON. RICHARD L. OTTINGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I am pleased to have the opportunity to express my wholehearted support for the legislation introduced by Rep. Fenwick to eliminate the so-called "marriage tax" on two-earner families. This glaring inequity in our tax structure cannot be tolerated any longer.

According to the Internal Revenue Service, more than half of all taxpayers are married and at least half of all married couples are two-earner families. These families—approximately 38 million Americans—are paying higher taxes than they would if they were single. In other words, these couples are penalized by the tax structure solely on the basis of their marital status.

I commend this committee for taking up this issue. I regret, however, that we will not be able to offer relief to those couples now filling out their 1979 tax returns and feeling the bite of the marriage tax. I hope that the committee will act expeditiously to provide relief before 1980 taxes are due.

Two factors cause this inequity in our tax system. *First*, the standard deduction for two singles combined is $4,000; for a married couple the deduction is only $3,400. Second, married tax rates are based on the combined income of two individuals compared to two separate incomes which both fall into a lower tax bracket. This means that if a husband and wife each earn $10,000 they pay $400 more than if they were not married. That amount, the "marriage tax," can increase as incomes go up if incomes of both parties are roughly equal. This is a real disincentive for two-worker families because the second income is taxed at a higher rate than it would otherwise be. Yet, with soaring inflation, more and more families need two incomes to make ends meet. As these families feel the effects of the current marriage tax, they are going to demand relief. I believe they deserve it.

On recent letter from a constituent explained how this tax affected his family. "Because of the present system of taxation, we are now paying $1,200 a year more in taxes on our combined incomes than if we were unmarried, filing as single individuals, and simply living together. And each time one of us is fortunate enough to merit a salary increase, our percentage of tax liability grows even greater." He went on to say, "I find it grossly inequitable to be taxed at a higher rate simply because my spouse has decided to use her education and abilities to pursue a carrier of her own."

Another constituent has figured out that if she and her husband were not married but just living together, they would get tax refunds amounting to $300. She concludes by writing "This leads me to believe that my government is against the institution of marriage."

Mr. Chairman, we know how many millions of individuals now are unfairly penalized by this marriage tax. We can only wonder how many chose not to get married but to live together because of this tax. This tax is not only unfair, it is inconsistent with other government efforts to strengthen the family. I urge you to act swiftly to eliminate this unjust tax.

CALUMET, MICH., *March 26, 1980.*

COMMITTEE ON WAYS AND MEANS,
U.S. House of Representatives,
Washington, D.C.

DEAR ELECTED OFFICIALS: I am protesting the present federal tax structure.

As a two-person working household, I feel that we are being unjustly taxed. It is necessary that we both work. Our gross income for 1979 was $23,500 and we have already paid $2,500 in incomes taxes. (Federal) From what I can gather, we will owe another $500 to $800 on top of that.

Our taxes are based on old income figures and do not take into account inflation. In other words, we should be taxed on approximately $16,750 if we were taxed fairly.

I would be interested in knowing what amount should be allowed per exemption in proportion to the rise in taxes since day one of income tax withholding. I would imagine it would far exceed the present $1,000 per person.

We presently have two children living at home. One we can claim and one we cannot. He has just gotten out of the Air Force and is unemployed.

I would be able to type a much longer letter in protest but hope this will suffice. I have much to do at home after work and have little time to write any kind of letter voicing my opinion. However, I strongly believe this nation is exhausting its most natural resource—the American taxpayer! This letter is a "first" for me to Washington, so I am sure that you can appreciate my protest of the present tax system.

Sincerely,

MRS. MARLENE PATRICK.

P.S.—We have been married over 22 years and it is now apparent that it would be beneficial that we get a divorce. As Mr. Davis states: "There is something seriously wrong with a government that encourages that sort of thing."

Statement of Hon. Edward J. Patten, a Representative in Congress From the State of New Jersey

I am appreciative of the opportunity to address your Committee today. My purpose is to discuss the Marriage Penalty in the Internal Revenue Code, and in specific, the use of a tax credit to remedy this problem.

The present structure of the Internal Revenue Code of 1954 provides a substantial subsidy to married one-paycheck couples, at the expense of married two-paycheck couples. More specifically, the Marriage Penalty generally occurs when neither spouse earns greater than 80 percent of the combined family income.

This penalty is extremely harsh. Many couples are assessed hundreds, and sometimes thousands of dollars in taxes, meerly because they fall within the two-paycheck penalty bracket. We know that 19 million couples are affected by the Marriage Penalty each year. The IRS estimates that the penalty amounts to $11 billion annually.

The tax rates within the Internal Revenue Code have had a checkered history. However, it is fair to say that although Congress did not create the current rates with a discriminatory intent, the present code has been systematically discriminating against lower and middle income families, the institution of marriage, and the equal rights of women. Recognizing the situation as it stands, we have a duty to act affirmatively. We can no longer sit back idly, perpetuating the discriminatory nature of our tax code. To that extent, I must commend you Mr. Chairman, and all of the members of this Committee, for holding hearings today and taking the first step in what undoubtedly will be a long and arduous task of remedying the Marriage Penalty.

The following are brief examples of some of the Marriage Penalty's most blatant discriminatory effects:

1. LOWER AND MIDDLE INCOME COUPLES

What is most intolerable about the Marriage Penalty, is that it primarily discriminates against lower and middle income families. Couples with a combined income within the ranges of $5,000 to $50,000 bear 99 percent of the Marriage Penalty. It is estimated that in 1974, less than 1 percent of the couples paying the penalty had a combined income in excess of $50,000.

It is sad to note that those primarily affected by the Marriage Penalty are least able to bear its burden. These lower and middle income couples are the same families who are presently being most crippled by double-digit inflation, double-digit interest rates, and soon to follow I fear, double-digit unemployment. We need not add insult to injury by making these couples continue to pay more than their fair share of taxes.

2. THE INSTITUTION OF MARRIAGE

There is much evidence to suggest that the weakening of the family units is eroding the basic fiber of our society. I was raised as a traditionalist, so I believe firmly in the institution of marriage. As a personal aside, I note that this year marks the 45th anniversary of my own marriage.

Whether or not you believe as I do in this sacred institution, I think you will agree that at the very least, the American people deserve a tax system which harbors no prejudice for or against the institution of marriage. Unfortunately, the present Internal Revenue Code offers the American people less than they deserve with respect to this issue.

As Commissioner Kurtz has witnessed through litigation, the Marriage Penalty is forcing many couples to resort to quickie divorces for tax purposes. These couples remarry and subsequently divorce again before the next tax year emerges. The number of married couples who have been forced to take this route represents only the "tip of the iceberg." We can never begin to estimate those who have opted in favor of non-marital cohabitation, solely because of a tax system wihch discriminates against marriage.

3. EQUALITY FOR WOMEN

Nor has the Marriage Penalty been a friend of the women's movement. In short, the penalty is repugnant to modern social reality and to the equal rights of women. Since first coming to Congress, I have witnessed the number of married women in the work force triple. Unfortunately, some of these married women were forced to enter the job market due to economic necessity. It is a somber fact that under present economic circumstances, it takes two paychecks to maintain a family. Yet, despite our sad state of economic affairs, many married women have entered the work force in realization of the new opportunities afforded them through changes in the law and enlightened thinking. For these women, the Marriage Penalty serves as a major obstacle toward reaching their full potential.

The Marriage Penalty tells women, "It will be cheaper for you to remain in the home as a housewife, than to enter the active labor force and explore a career in any of the ever expanding number of job opportunities." It would truly be ironic for a government on one hand to give women the legal right to be all they can be, while at the same time perpetuating economic disincentives to discourage women from exercising their newly won rights.

Congress cannot be oblivious to the increasing number of married women in the work force. Nor can we ignore the chilling effect the Marriage Penalty has had on this nation's goal of achieving equality for women.

MARRIAGE PENALTY OFFSET TAX CREDIT ACT OF 1980

There is no secret to eradicating the Marriage Penalty from the Internal Revenue Code. Creating one tax rate schedule for both married and single persons would permanently end this controversy. The IRS claims that the cost of eliminating the penalty would be $11 billion. I support proposals which would eliminate the Marriage Penalty. However, I have been in these hallowed halls too long to know that this Congress is not prepared to bear the $11 billion price tag of this proposal.

Mr. Chairman, most of us in this room have spent nearly a decade trying to remedy the Marriage Penalty problem. To this date, we have failed to attract sufficient support from our colleagues to move this issue beyond square one. I find that especially in a year when the President is asking us to balance the budget, a permanent solution to the problem of the Marriage Penalty is not politically feasible.

Despite the fact that it is impractical to think that Congress can eliminate an $11 billion Marriage Penalty in one year, there are 38 million Americans desperately in need of some form of immediate relief. Recognizing the major symptoms of the Marriage Penalty, I have introduced H.R. 6798, the Marriage Penalty Offset Tax Credit Act of 1980.

Let me preface my discussion of H.R. 6798 by emphasizing that my bill does not portend to be the definitive answer to the Marriage Penalty problem. However, I believe that especially through the use of the Tax Credit, H.R. 6798 can serve to eliminate a substantial portion of the penalty, especially among lower and middle income couples, at a cost which is fiscally responsible.

TAX CREDITS AND EQUITY

I have seen many proposals dealing with the Marriage Penalty. As I recall, most of these proposals would use a dedication to help offset the Marriage Penalty. I am an ardent supporter of Tax Credits as opposed to deductions, and my bill relies firmly on the concept of using the Tax Credit to help remedy the Marriage Penalty.

Unlike itemized deductions, Tax Credits are available to all eligible married couples, regardless of whether they file the long or short form with the IRS. Moreover, where deductions provide a greater benefit for persons in higher income brackets, a Tax Credit provides a dollar for dollar deduction against tax owed, without discriminating on the basis of income. As a matter of equity, it makes far more sense to combat the Marriage Penalty with a Tax Credit.

ELIGIBILITY

Mr. Chairman, I have seen some proposals which would provide *all* married couples with a deduction or credit to remedy the Marriage Penalty. However, these proposals are excessive.

Whenever one spouse earns greater than 80 percent of the total earned income of the husband and wife, the Marriage Penalty dissipates. In fact, these one-paycheck families presently enjoy a Marriage Benefit under the Internal Revenue Code. If our aim is to offset the Marriage Penalty at a cost affordable to this Congress, we cannot provide those couples presently receiving a Marriage Benefit with additional deductions or credits.

H.R. 6798 provides for a Tax Credit equal to 10 percent of the earned income of the Secondary Wage Earner (i.e. the spouse earning 50 percent or less of the couple's combined earned income). The maximum credit allowable is $500 and the credit is non-fundable. In order to make H.R. 6798 as lean and efficient as possible, I have formulated the Marriage Penalty Offset Tax Credit to only trigger when couples are actually faced with a Marriage Penalty.

Under the Marriage Penalty Offset Tax Credit Act of 1980, a married couple would only be eligible for a 10 percent tax credit when the Secondary Wage Earner earns 30 percent or more of the combined earned income of the husband and wife. The 10 percent tax credit shall be reduced by 1 percent for every percent the Secondary Wage Earner earns less than 30 percent of the couple's combined earned income.

Eligibility table for the marriage penalty offset tax credit act of 1980

Secondary wage earner's percentage of earned income	*Tax credit percentage*
50 to 30	10
29	9
28	8
27	7
26	6
25	5
24	4
23	3
22	2
21	1
20 to 0	0

As you can see from the eligibility table, my Tax Credit would dissipate with the Marriage Penalty. There is no Tax Credit for couples where one spouse earns 80 percent or more of the combined income of the husband and wife (i.e. one-paycheck families).

ADDITIONAL CONSIDERATIONS

1. Earned Income under H.R. 6798, is the same as defined under I.R.C. § 43(c)2.
2. Only one spouse shall be treated as the Secondary Wage Earner, even when both husband and wife each earn 50 percent of their combined earned income.
3. The Tax Credit is only allowable where married couples file a Joint Return under I.R.C. § 6013.

EFFECT

I am especially pleased with the results indicating that H.R. 6798 would have its primary impact upon married couples filing joint returns in the $5,000 to $50,000 ranges of income. As stated earlier, these taxpayers are most in need of immediate relief. While my bill would not eliminate the entire Marriage Penalty, it would provide eligible lower and middle income couples with genuine assistance until such time as the Congress is able to completely eliminate the Marriage Penalty.

Earlier in the year, the IRS conducted a revenue study on several of my proposals to remedy the Marriage Penalty. Their results indicated that a bill similar to H.R. 6798 would cost about $5.5 billion. Since that study, I have incorporated several refinements in my proposal which leads me to believe that H.R. 6798 may cost substantially less than projected by the IRS. Chief among those refinements was basing eligibility on earned income percentages, instead of gross income.

In order to receive a more accurate projection of the cost of H.R. 6798, I have commissioned the Joint Committee on Taxation to conduct a revenue study on the Marriage Penalty Offset Tax Credit Act of 1980. I am confident that my proposal will cost the Treasury less than $5 billion.

As an additional note on cost, I must emphasize one point, Mr. Chairman. Our actions here today should not be construed by our fellow members or the White House, as providing eligible married couples with a tax cut. That issue has become a matter of partisan debate and presidential politics. Rather, what we are doing today is simply eliminating the injustice of over-taxation which has been wrongfully imposed upon 38 million Americans for almost one decade.

CONCLUSION

Mr. Chairman, while I have spoken unwaveringly in support of H.R. 6798, I must pay deference to the expertise of yourself and this Committee.

I do know, for example, that there will be instances in which the Marriage Penalty Offset Tax Credit will not only remedy the Marriage Penalty, but occasionally overcorrect the inequity. Also, this Committee may develop an opinion on whether or not the Marriage Penalty Offset Tax Credit should be non-refundable. But collateral issues aside, I hope that I may impress upon this Committee the importance of adopting the Tax Credit as a means to offset a substantial portion of the Marriage Penalty.

We are going to hear many proposals today, from many able men and women who are genuinely concerned about the lower and middle income married persons who are in such desperate need. I can only hope that when this Committee concludes its work, it will see fit to incorporate the concept of the Tax Credit and the provisions of the Marriage Penalty Offset Tax Credit Act of 1980, as a viable legislative program to help the working married couple.

[H.R. 6798, 96th Congress, 1st session]

A BILL to amend the Internal Revenue Code of 1954 to provide a credit against income tax to offset the marriage penalty under the income tax rates

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Marriage Penalty Offset Tax Credit Act of 1980".

SEC. 2. MARRIAGE PENALTY OFFSET CREDIT.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting after section 44C the following new section:

"SEC. 44D. MARRIAGE PENALTY OFFSET CREDIT.

"(a) IN GENERAL.—In the case of a husband and wife, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the marriage penalty offset credit for such year.

"(b) MAXIMUM CREDIT.—The credit allowed under subsection (a) for the taxable year shall not exceed $500.

"(c) MARRIAGE PENALTY OFFSET CREDIT DEFINED.—

"(1) IN GENERAL.—For purposes of subsection (a), the term 'marriage penalty offset credit' means 10 percent of the earned income for the taxable year of the secondary wage earner.

"(2) CREDIT REDUCED WHERE SECONDARY WAGE EARNER EARNS LESS THAN 30 PERCENT OF COUPLE'S EARNINGS.—In any case where the secondary wage earner earns less than 30 percent of the total earned income of the husband and wife, the percentage contained in paragraph (1) shall be reduced by 1 percentage point for each percentage point the secondary wage earner's earned income is below 30 percent.

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) EARNED INCOME.—The term 'earned income' has the meaning given such term by section 43(c)(2).

"(2) SECONDARY WAGE EARNER.—

"(A) IN GENERAL.—The term 'secondary wage earner' means the spouse whose earned income for the taxable year is 50 percent or less of the combined earned income of both the husband and wife for such year.

"(B) ONLY 1 SPOUSE TREATED AS SECONDARY WAGE EARNER.—In any case where the earned income of each spouse is 50 percent of their combined earned income for the taxable year, only 1 spouse shall be treated as the secondary wage earner.

"(e) SPECIAL RULES.—For purposes of this section—

"(1) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than credits allowable by sections 31, 39, and 43.

"(2) CREDIT ALLOWABLE ONLY WHERE JOINT RETURN IS FILED.—This section shall apply only if a joint return is filed for the taxable year under section 6013."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The table of sections for such subpart A is amended by inserting after the item relating to section 44C the following new item:

"Sec. 44D. Marriage penalty offset credit."

(2) Subsection (b) of section 6096 of such Code (relating to designation of income tax payments to Presidential Election Campaign Fund) is amended by striking out "and 44C" and inserting in lieu thereof "44C, and 44D".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1980.

EAST WINDSOR, N.J., *April 7, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee of Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR SIR: As part of a working couple, I wish to register my opposition to the tax on marriage.

To have to pay a higher federal income tax because my husband and I just don't live together is unfair.

I wish to acknowledge my support on Congresswoman Fenwick's bill that gives working couples the option of being taxed as if they were single.

Sincerely,

CAROL JOHNSON PLUMERI.

STATEMENT OF THE PRESIDENT'S ADVISORY COMMITTEE FOR WOMEN, LYNDA JOHNSON ROBB, CHAIR

The President's Advisory Committee for Women (PACFW) welcomes this opportunity to testify on the Marriage Penalty Tax. Much of the supporting material for this testimony has been drawn from testimony given at Committee hearings in Raleigh, N.C. last September.

Between 1956 and 1976, the number of married women in the labor force doubled from 11 million to 22 million.[1] The main reason millions of women are entering the work force is out of economic necessity. Wives contribute 40 percent of the earnings of working couples. In these inflationary times, the American standard of living would be significantly reduced if working wives were forced to leave the work force and the family had to depend on the wages of one provider, or welfare! Often, it is the wife's earnings that may push the family above the poverty level.

While the significant contribution of the working wife's paycheck to the family's well-being is gradually being recognized, the federal tax system has undergone little revision since the Tax Reform Act of 1969 to recognize this reality and is actually penalizing women and their families.

The most obvious tax inequity effecting working wives is that the Federal government demands a higher income tax payment from a dual-income married couple than it does from an unmarried couple living together and earning the same combined incomes.

The present tax system is based on the outmoded labor assumptions of the mid-to-late 1960's, when working wives were only just beginning to increase their labor force participation rate. The 1969 tax system, which was designed to give married couples a tax rate advantage, works only to the advantage of a married couple who relies solely on one wage earner. But since women make up a larger percentage of the total family income, families are paying higher taxes for maintaining a married state rather than cohabitated state.

According to Zaida I. Giralda, a researcher at the Center for the Study of the Family and the State at Duke University who testified at our hearings in Raleigh, North Carolina, an unmarried couple earning a combined income of $15,000 pays a total of $4,944 in Federal income taxes (based on 1977 tax schedule). If the same couple were married and earning the combined income of $15,000, they would owe $5,197 in Federal taxes—a difference of $1,013!

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[1] Z. I. Giraldo, testimony before the President's Advisory Committee for Women, Raleigh, North Carolina; 1979.

This difference stems from the fact that all income is reported on a joint return and taxed at the total marginal tax rate rather than according to the individual's marginal tax rate. The second income pushes the combined income earnings into a higher percentage tax bracket.

When the two incomes differ, the lower income earner is adversely affected. This is because the very first dollar of the lower income earner's wage will effectively be taxed at the higher wage earner's tax rate. And since the majority of women earn less than their husbands, working wives carry the brunt of the increase in taxes.

Take the example of a husband whose taxable income is $8,000 and his wife whose taxable income is $5,000. Because of the joint return, the wife's first dollar earned will be taxed at 22 percent. Her employment will increase the family's federal income tax bill from $1,380 to $3,820 (1972 rate). Therefore her share of the bill is $2,440. Taxes take a larger bite out of her earnings ($2,440 out of $5,000) than her husband's ($1,380 out of $8,000). Further, if we assume state and local taxes average 5 percent, her cost is $500. If her Social Security tax amounts to $468 (1972). Therefore her gross income will yield $1,592.[2]

The practice of charging the additional taxes against the wife's portion of the income, makes her contribution seem small relative to the husband's contribution because her income is seen as pushing the family into a higher tax bracket.

In another instance, if the wife of a man earning $20,000 earned $7,000 on her own, the couple would have to pay about 30 percent of her income in Federal income taxes. This rate would be close to doubled the one she would be liable for if she were to be taxed as an individual. The rate would rise to almost 40 percent if her husband earned $30,000 per year.[3]

Perhaps even more inequitable is the fact that families have to bear the additional strain of child care when both parents work and have pre-school age children. The total cost of child care cannot be deducted from federal taxes. Working parents receive a maximum tax credit of only $400 for the first child and $800 for two or more children. Is it any wonder that the average size of the American family is decreasing?

Time Life researchers calculate that the mother of small children earns as much from a part-time job that eliminates the need for a baby sitter as she does from a fulltime job that necessitates one.[4]

The President's Advisory Committee for Women therefore urges the government to come to grips with the changing role of women, to recognize that women are making significant contributions to the economic and social well-being of the American family, and finally, to recognize that women are a permanent and growing portion of the American labor force. We recommend a change in the tax law so two people are not penalized for marrying, so that wives are not penalized for working and developing their own careers, and so that women are acknowledged as individuals contributing to the strength of the U.S. economy.

WHARTON, N.J., *March 27, 1980.*

JOHN M. MARTIN Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I understand that your committee is scheduled to begin hearings soon concerning H.R. 3609, the bill to eliminate the "tax on marriage." I urge you and your committee to support this bill to eliminate this inequity in the existing tax laws.

As you know, economic necessity has required many households in our country to have two income producers. Yet, because the two are married, they are penalized and must pay more income tax than if they were single occupying the same household. I personally know three couples, who at the present time have chosen to "live together" rather than marry. In discussing the pros and cons of their arrangement, they all indicated that they chose not to marry because of the extra tax that they would be forced to pay. This, of course was not the only factor that affected their decision, but they all felt that it was significant.

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[2] Bird, Caroline, The Two-Paycheck Marriage; 1979, pp. 139–140.
[3] Durham Manning Herald. "Marriage Tax: Sin's Cheap" Apr. 6, 1979.
[4] Ibid. Giraldo.

Because we chose to marry, my husband and I were required to pay $1,200 more in taxes this year as a married couple than we would have paid had we remained single. Combine this with all of the other ever increasing taxes and inflation, and the result is that our disposable income is rapidly shrinking.

As our tax structure presently exists, it helps to encourage divorce and "living together" arrangements and discourage the family unit. There are now couples in this country who actually obtain a divorce annually at tax time, just to avoid this discriminatory tax. Is this what our country wants to continue to encourage?

As a nation that is built on principles of equality, I feel that the present tax structure is unfair. Why do two individuals have to be penalized because they wish to marry and need to work?

I ask you to please give this bill favorable consideration and make sure it gets to the floor of the House for passage.

I appreciate your consideration.

Very truly yours,

Edna T. Pym.

New Providence, N.J., *March 25, 1980.*

John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

Dear Mr. Martin: As a retired teacher, I am urging the passage of the bill H.R. 3609 to eliminate the "tax on marriage."

Two-earner married couples become at times two pension couples when they retire. As pensions are much lower than salaries, this would be one way to help senior citizens living on fixed incomes.

As a single person, I would pay 14 percent of pension in tax. As a married person, my pension is added to my husband's income, and I pay 43 percent of my pension in taxes. This leaves about half of my pension as a reward for 37 years of work.

I urge the passage of this bill.

Sincerely,

Dana C. Quarles.

Mercerville, N.J., *April 6, 1980.*

John M. Martin,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

Dear Mr. Martin: In reference to the enclosed editorial [retained in legislative file], I am in full support of Mrs. Fenwick's bill and respectfully urge your committee to act favorably toward this very important piece of legislation. The passage of this bill will remedy a gross injustice in our taxation system.

Sincerely,

William V. Radlinsky.

Chicago, Ill., *March 24, 1980.*

Mr. Martin: I hope you will support Mrs. Fenwick's bill to equalize tax between marrieds and singles.

Single people do not need a reason today, especially from our government, not to marry. The government should be encouraging the family.

Yours,

Mrs. Murray Rimsay.

Manahawkin, N.J., *April 5, 1980.*

John M. Martin,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

Dear Mr. Martin: I am writing in support of Congresswoman's Fenwick's bill to provide tax relief for married working couples. My wife and I earn approximately the same salary ($15,000) and yet we are hard-pressed to make ends meet. Under the existing tax structure we are in effect being penalized for a way of life which is rapidly becoming an endangered species—the institution of marriage.

It is incomprehensible to me how this situation has evolved. Yet I can well appreciate the desperate measures taken by that famous couple who have married and divorced several times in order to circumvent this penalty. We should all be that courageous.

However, the majority of us married couples are relegated to only one alternative: voicing our opinions and concerns through our duly elected representatives. Is it so difficult to finally enact legislation which accurately reflects the concerns of the married people? I believe my opinions are universally shared; the institution of marriage should be encouraged not discouraged. All arguments contrary to a tax law change dissipate in light of the pure fact that the institution of marriage is the brightest hope for the future.

Please give us a break; we have earned and deserve it. We have not taken the easy route; we have willingly accepted awesome responsibilities and made substantial commitments to the future in an area where many people today do not seem to experience much success. Promote marriage; revise the tax laws.

Ben Rivera.

Trenton, N.J., *April 4, 1980.*

Dear Mr. Martin: I am writing to you in support of the bill which would end the unfair "marriage tax."

I cannot believe that our government actually penalizes those of us who are married, and "rewards" those who are living together and not married.

It seems to me that the present system promotes immorality and for a country who had as its foundation Godly principles, this is intolerable.

Sincerely,

Mary Rae Rogers.

Princeton, N.J., *March 28, 1980.*

John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

Dear Mr. Martin: We are two married women attorneys who are being penalized by the tax on marriage. We urge the House and Ways Committee to approve H.R. 3609, Millicent Fenwick's Bill to eliminate this unfair tax. Two-earner married couples should have the option of filing as if they were single.

Respectfully yours,

Edith S. Rose.
Louise M. Samaroo.

Trenton, N.J., *April 9, 1980.*

John M. Martin,
House of Representatives,
Washington, D.C.

Dear Sir: As a married taxpayer for years, I am writing you in support of Rep. Millicent Fenwick's Bill H.R. 3609. I am also writing in behalf of the many young people, who would benefit financially by living together, rather than marrying. I understand some years ago, the tax program was restructured because it was unfair to single earners. Now it is unfair to all married workers.

Please call for divorce of the "marriage tax."

Sincerely,

Mrs. K. Rusnak.

Yakima, Wash., *March 27, 1980.*

Mr. John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means, U. S. House of Representatives, Longworth House Office Building, Washington, D.C.

To the Committee: This letter is in regard to the hearings being held April 2–3, 1980, on the disparate tax treatment of single and married individuals. Due to the expense of attendance in person, I wish to submit written comments to the Committee.

I am a practicing attorney with eight years' experience. I am a graduate of Harvard Law School and have a Masters Degree in taxation. In my everyday practice I deal with the wide range of tax problems both of average persons and of business entities.

In my practice, I hear people complain regularly about the tax structure of this nation. Without exception, every one of them regards the structure of the personal exemptions and separate tax rates as to married and single persons as the greatest intrusions upon their private lives and the proof of the absurdity and discrimination inherent in the taxation system. Although the Committee may hear speculation, I wish to assure them that in fact people are getting divorced in order to save thousands of dollars a year in taxes. In addition, I have counseled several persons as to the effect that marriage would have upon their tax status followed by their decision not to get married, but instead to live together. This has serious potential for undermining the marital family unit, the backbone of this nation.

Almost as serious as the above, is the universal and pervasive notion that because Congress can not do something about a problem so simple as equalizing the tax rates and exemptions to eliminate the extraordinary injustice that affects every person's life as a result, that the Congress is in fact absolutely impotent to solve the many other problems that face the nation today. I cannot tell you the number of persons that point to this one example as proof that this nation is not governed by any rational or sane policy.

I would urge the Committee to adopt a tax structure which taxes individuals based solely on their income and not on the vagaries of their personal lives. This would not only make a simple and easy to understand tax law that would have no affect on any person's decision to marry, have children, or the like, but would also substantially lessen the work load of the IRS and streamline and simplify the tax forms. Failing this, the Committee should avoid any attempt to adopt an even more complex, baffling, and unfair system which will only serve to further undermine what little public confidence remains in the system of taxation and in the ability of Congress to pass laws which would be obeyed because they make sense.

Sincerely,

Gerard L. Sandersen.

Mount Tabor, N.J., *April 1, 1980.*

Hon. John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Repesentatives,
Longwoth House Office Building, Washington, D.C.

Dear Counsel Martin: This letter is in support of the above mentioned bill to eliminate the so called "tax on marriage."

I am a career Civil Servant, having graduated from a fine American College with two years of Graduate School. I am in the Probation Service of our County Government. At age forty-six and having reached the top in my field, you would think that myself and my family would be secure and enjoying a comfortable life. Well, we were until my wife decided to enter the work force when my son entered College. Instead of helping my son, we ended up in debt because each year we had to pay additional Federal Taxes. This situation and, perhaps, thousands like it, prompted me to write last year to Representative Millicent Fenwick. She was sympathetic and told me of her support for such legislation as the above.

I am deeply grateful to Mr. Fenwick and all other Legislators who support the above bill and I sincerely hope you will do the same.

Thanking you in advance for your consideration of the above, I remain,

Very Truly Yours,

Thomas J. Scerbo.

Statement of Hon. Pat Schroeder, a Representative in Congress From the State of Colorado

Congress is constantly trying to accomplish equitable tax distribution. Eliminating the discriminating tax against married people is long overdue.

Fifty-seven percent of today's families have both the husband and wife working. Approximately seventy percent of all married women will be working by 1990. For most of these couples the second income is not a luxury but a necessity. And for all of these couples the second income is being taxed 10 percent above a single person with the same income.

There are several countries, as well as several states that switched to individual taxation, which has not only relieved married persons of an added tax burden but also created a work incentive.

I fully support Representative Fenwick's bill, H.R. 3609. I believe we have a commitment to sustain marriage and families, not penalize them. And the elimination of the marriage penalty tax is a good way to begin.

WESTFIELD, N.J., *April 1, 1980.*

JOHN M. MARTIN, JR.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR SIR: I would like you to submit my papers to the House hearings on the 'Marriage Tax". I feel that the tax is unconstitutional, and my wife and I are currently fighting the tax with our local I.R.S. office in Mountainside, New Jersey. Enclosed are five copies of my statements; there is a list of questions [retained in legislative file] to which I would answer "yes" and a page of questions on which I base my case.

Very truly yours,

ROBERT J. SCHUNDLER.

MARRIAGE TAX OR THE INCOME TAX INCREASE WHEN TWO WORKING PEOPLE MARRY

To maintain the constitutionality of our Federal Income Tax, the income tax must be modified so that working couples (married or not) can file as individuals (as singles) or as couples (jointly). Tax payers must have the right to pick their own tax table. Otherwise the present income tax is null and void because of its unconstitutionality.

"In God We Trust". . . the United States of America proclaims with each coin and bill that leaves the mint, and our Declaration of Independence proclaims to the world that we the people of the United States of America were given rights by God that no government including our own government can violate, that should any government violate these rights that government loses the right to govern. Among the rights, but not limited to, are the rights to "Life, Liberty, and the Pursuit of Happiness" . . . God is . . . God was before our government and will be after our government. Our rights are given by God and not the State.

The Constitution of the United States does not give the right of "freedom of religion" but it does protect the right of "freedom of religion". The state is not permitted to establish a state religion nor to interfere with the free exercising of one's religion. This is as it should be.

The Internal Revenue Service has unwittingly violated the people's right to the "free exercise" of their religion, and therefore, it has violated the laws of God and the Constitution of the United States.

If a law is in conflict with the Constitution it becomes "null and void" so our current tax is "null and void".

"How can this be?" you might ask. Examine the tax treatment of working couples. If a man and a woman are each working and earning their own income they are taxed less if they do not marry even if they are living together. If they follow the teachings of their church and marry, then they are taxed more. The result is that we have a tax penalty involved in a church wedding. The extra tax is not based on when a man and a woman start living together but when a man and a woman partake in the church sacrament of marriage. This extra tax is a violation of the right to the free exercising of one's religious faith. This basic violation of our God given and State protected rights results in our current income tax law being automatically null and void.

I am sure this major violation of our basic rights by the Internal Revenue Service was made in error and that this error will be corrected by the Internal Revenue Service or by Congress, but action to correct this error must be taken at once!

The violation is the extra income tax due from married working couples. The state may tax working couples but the tax must not be based on whether or not the working couple are married. The New Jersey Income tax is within the law

West Orange, N.J., *April 1, 1980.*

John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

Dear Mr. Martin: Portions of a letter I wrote to Congressman Joseph Minish are usable as written testimony at the hearings related to federal income tax treatment of married individuals. I am submitting five copies which I hope will be pertinent to the hearings and subsequent changes in the laws as they now exist. I am also willing to testify in person if so requested.

Sincerely,

Norman Shayer.

Enclosure.

West Orange, N.J., *March 7, 1980.*

Representative Joseph G. Minish,
308 Main Street,
Orange, N.J.

Dear Congressman Minish: I called your office, November 21, 1979, and spoke to Ms. Jane Meyers in reference to a problem and subsequent distress inflicted upon my wife and myself by the Internal Revenue Service. Since this is the first time I have had a grievance and was not familiar with the procedures involved in a matter of this type, Ms. Meyers suggested I put my feelings in a letter and submit the letter to you prior to a meeting with you or a member of your staff. The temporal lapse between the first contact I had with your office and the writing of this letter was necessary because of the time involved in the present resolution of my association with the Internal Revenue Service and their agents. The following narrative will serve as an outline of my involvement.

I was married August 30, 1978, and reside with my wife Gail and her two children by a previous marriage, at 50 Hoover Avenue, West Orange. During the 1978 tax year I was married for a period of four months. I am employed by the Board of Education, Livingston, New Jersey, and have been for a period of thirteen years. I teach chemistry at Livingston High School and am also the Assistant Ice Hockey Coach. I feel I have enjoyed success in both facets of my work.

My status for Federal income tax, reported and deducted by the Board of Education, is single and zero dependents and has been for a period of nine years including the time after my marriage. However after being married for four months and filing a joint return, I had to pay an additional $570. This joint return was prepared by the firm of Friedman, Strulowitz and Buren, C.P.A.'s, of Livingston, New Jersey. My income was added to my wife's thrusting us into a higher bracket along with the extra push added by inflation. The law provides no method of indexing or proportionality for marriage, although the IRS disallows divorce near the end of the year for tax purposes. Evidently, the government encourages the idea of living together without marriage and also wants to dictate the months of the year a person should marry. The tax laws are presently advantageous to those who do live together and marry in January of a given year. This is outright discrimination.

In October of 1979 I received a form letter from the Internal Revenue Service Group 2510, 2 Broad Street, Bloomfield, New Jersey 07003, informing me that our return contained a misdeduction of $481, taken as a tax credit for child care. The child care expense was incurred prior to my marriage. My wife, as mentioned, has two children and is employed by the Belleville Board of Education as a Speech Therapist. I naturally called the accounting firm and was informed they will attempt to rectify this situation. However, after my accountant contacted the agent, one Ms. Tappan, he indicated to me a further audit was underway and all my miscellaneous deductions were disallowed. Well, the bottom line is that after several letters and conferences, complex gathering of information, inconveniences, and upon the advice of my accountant, we agreed to a settlement of $880. This did not include additional fees paid to my accountant.

My feelings and conclusion are those of bitterness, anger, and harshness, and I want the IRS to become aware of them.

I genuinely feel I have been discriminated against by the IRS through their agent Ms. Tappan. I feel she displayed an uncooperative, arrogant attitude. Her written evaluation, Form 1902-E, is neither accurate nor true. The grief and anguish to my wife and me caused by this treatment prompted me to settle (as I assume the IRS figures many decent and honest citizens will do likewise).

My tax return had never been audited and after four months of marriage, it is. The notice (form letter) informing me of the audit did not indicate what method was used in selecting my return. Ms. Tappan interpreted and disallowed deductions, sat as judge and jury, and called my wife and me liars. Perhaps she did not like the idea we are teachers and I, a coach. I doubt if she ever saw a hockey game in her life.

If laws presently exist that allow accusatory and prejudicial treatment of this type, they should be modified or changed. I do not think that citizens like my wife and myself should be subjected to the anxiety and apprehension produced by the IRS.

These practices are a direct contradiction to the type of society our government purports to have. Maybe the IRS belongs in George Orwell's 1984 society or in a place where the rights of individuals are subjugated.

Sincerely,

NORMAN SHAYER.

TULSA, OKLA., *March 31, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means,
Longworth Office Building, Washington, D.C.

DEAR MR. MARTIN: Although I am a single taxpayer, I believe the tax laws need to be changed to remove the current inequities. The tax laws in the United States at the present time discriminate against married couples versus single taxpayers. This has created a situation where many couples find it is more beneficial to live together unmarried rather than marrying and paying a substantial amount of their income in additional taxes. For example, *an unmarried couple* each earning $20,000 per year *will pay $2,850* less in federal income taxes for 1979 than a married couple with the same income. I wholeheartedly support legislation to help eliminate these inequities in tax laws, and believe the tax laws in the United States *must be changed* to eliminate the present "living in sin" subsidy of our current tax laws. There should be no discrimination in our tax laws based on marital status.

Sincerely yours,

CYNTHIA P. SHEPHERD.

TRENTON, N.J., *April 4, 1980.*

JOHN M. MARTIN,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: My husband and I support Mrs. Fenwick's bill to end the "Marriage Tax". We want to be counted among the many married working couples who pay higher taxes and feel it is unfair and unjust!

Please add Robert and Mary Ann Sliwa's signatures to the list of those who support the bill to end the "Marriage Tax".

Respectfully,

ROBERT R. SLIWA.
MARY ANN SLIWA.

SKIPPACK, PA., *March 30, 1980.*

Mr. JOHN M. MARTIN,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I am a home economics teacher at Indian Crest J.H.S., Souderton, Pa., and a member of NEA-PSEA. My husband is a correctional officer at the Pennsylvania State Correctional Institution at Graterford and a member of AFSCME. For the sake of keeping our public jobs, we married in June 1978. Since then we have loathed the "tax on marriage". We are happy to see that someone is trying to eliminate this tax through bill H.R. 3609. We feel that we are paying more for the privilege of wanting to be married. We still pay the same amount of bills except for now we only pay for one apartment. We work hard for our money and feel like not working because you can make out better. It was reported that we now work until May to pay the governments' taxes. And then on the money that we do get to take home, we can't even keep up with bills. The idea of starting a family is almost obsolete because we can't make it on one salary. We can't even get out of an apartment on two!

This is the second year that we owe money to the IRS. If we could file as single individuals, we would get some money returned. But because of the "tax on marriage" we must withdraw from our savings over $600.00 to pay the taxes. If we would file married-filling separately we would owe nearly $900.00.

We are beginning to see why money is the number one reason for divorce. Our government does its best to make its share of interference. If something positive is not done with our tax problem, the American family will be an endangered species; the American dream of making it better for your family will be dead.

Please eliminate the "tax on marriage" before the future is ruined. Allow people the choice of filing as single or a married couple when married. The working people deserve that much from our Congress.

Tired taxpayers-workers,

Susan L. Smith.
Guy C. Smith.

Yardville, N.J., *April 18, 1980.*

John M. Martin,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

Dear Mr. Martin: My husband and I are opposed to the tax on marriage. We feel Congresswoman's Millicent Fenwick's bill should be passed and made law so we be given the option to be taxed like single people.

Sincerely,

Dolores A. Solan.

Spanish Speaking/Surnamed Political Association, Inc.,
San Francisco, Calif., March 7, 1980.

Hon. Al Ullman,
Chairman, Committee on Ways and Means, House of Representatives, Washington, D.C.

Dear Chairman Ullman and Members of the Committee: Hispanic-American citizens and taxpayers and others similarly situated are very concerned about the above-captioned subject.

Due to inflation the existing "penalty" against married persons has become intolerable, particularly since no indexing of inflation has been established to alleviate the situation, pending new legislation.

The overwhelming result is a shortage of cash leading to excessive use of credit which in turn feeds inflation with the corresponding decrease in real income.

Hispanics are among the least able to withstand this situation which in effect reverses affirmative action efforts and other vital issues of National policy. Actual bankruptcy is accelerating and potential chaos of a magnitude that defies description is imminent, in my opinion.

Accordingly, we shall present a plan to remedy this situation on or before March 21st, and shall seek to have this published in the Congressional Record, in Spanish and English, side by side, for widest possible dissemination and information.

Yours truly,

Ricardo A. Callejo, *Counsel.*

West Palm Beach, Fla.

Dear Mr. Martin: This marriage tax is keeping young folk from getting married. I know young folks who are "shacking."

Pardon me, but it is wrong.

Most sincerely yours,

Mrs. Viola Straka.

Summit, N.J., *April 1, 1980.*

Millicent Fenwick,
Member, U.S. House of Representatives.

Dear Representative Fenwick: I wish to call to your attention my strong interest in and support for H.R. Bill No. 3609. The "marriage tax," under which married people have had to pay more income tax than two single people with the same aggregate income has always seemed to me to be unjust and an unfair burden on married couples. I urge you and all your House colleagues to vote for this Bill.

Sincerely,

Paul Swartz.

STATEMENT OF HON. AL SWIFT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. Chairman, this problem called the marriage tax penalty has bothered me for a long time. I'm pleased the House is giving it the consideration, serious consideration, which it deserves and I wish to thank the members of the committee for this chance to support the legislation being considered today.

I've heard from many of my constituents over the last year, people concerned about the marriage tax penalty. They say it's wrong, that it gives a tax advantage to people who live together but who are not married. Having spent the last weekend working on my own tax returns, I can share the concerns my people have raised.

My wife has worked as a teacher and, for years, we've tried to figure out ahead of time what we owe the I.R.S. It has never worked out and we've always ended up with a big payment due, a payment we wouldn't owe if we both worked, but were not married.

The marriage tax penalty affects as many as one-quarter of all taxpayers. A prominent constituent of mine wrote me just a year ago, only a few months after he was married.

"Doubtless the editorial . . . entitled "Marriage penalized in federal tax code" has been brought to your attention. I have been a recent victim of this personally. Because I did not seek the advice of my accountant about when I should marry, 28 days of marital bliss cost me $3,300. . . . Had I waited until January 1, 1979, I would have had a refund on my federal tax return."

This letter goes on to urge—as I'm sure you can understand—that the marriage tax penalty be removed completely. I would join my constituents and my colleagues who have given you their views this week in urging this committee to favorably report legislation to the House Floor that will ease—if not remove completely—the burden of the marriage tax penalty.

Mr. Chairman, again, thank you for this chance to support the very worthwhile and valuable legislation you are considering.

STATEMENT OF HON. TOM TAUKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

I commend you for your interest in this most important issue, the treatment of marital status in federal income tax policy, and I appreciate the opportunity of having my statement entered in the record.

Let me say at the outset that the so-called marriage penalty," as it applies to a married couple in which both spouses produce income, is not only unfair and inequitable, but it is also out-dated and contrary to the social norms of this nation. The problem has been compounded by our court system's unsympathetic view of the issue. As a result, the marriage tax issue has been dropped back in our laps, perhaps where it rightfully belongs anyway. It is, therefore, even more urgent that Congress accept its proper role in matters of taxation and eliminate the inequities caused by the marriage penalty.

The marriage penalty is the difference between the tax liability of a married couple in which both spouses work and file a joint tax return and the combined tax liability of the two spouses if each were to file his/her taxes separately. Given the dramatic rise in the number of two-earner married couples, this differential has resulted in an unfair tax burden on people who don't deserve it. Currently, 57 percent of this nation's families have both spouses working. And it is estimated that over 15 million couples are negatively affected by the marriage penalty. Moreover, that figure will undoubtedly grow as more married spouses enter the labor force. In fact, by 1990 approximately 70 percent of all married women will have entered the work force, including those with children.

The marriage penalty arises when each spouse earns at least 20 percent of the couple's total income. The following example illustrates the problem. A man and a woman, each unmarried, filing separately, using the standard deduction, and having an income of $15,000 would each incur a federal tax liability of $2,345, for a combined tax of $4,690. If, on the other hand, the two were to marry, their $30,000 joint income would be taxed at a rate of $5,593. The resulting marriage penalty would, therefore, be $903.

The message is clear: "If you must work, don't marry; if you must marry, don't work; violators will be persecuted."[1] The marriage penalty is undoubtedly perceived as a disincentive. Not only does the current system ignore the difference in the ability to pay between one-earner and two-earner families, it also discourages second wage earners from participating in the work force, and, most importantly, it encourages people to select cohabitation over marriage.

In previous years, taxpayers impacted by the marriage penalty devised ingenious plans to avoid its burdensome economic effects. Some have even gone so far as to divorce at the end of one year and then turn around and marry at the beginning of the next. Often, these couples used the tax savings to pay the expenses of the "divorce trip."

Although the Internal Revenue Service has put an end to these attempts to avoid tax penalties, the problem still remains: a married couple with both spouses working may incur a higher tax liability than a couple that is cohabitating. In other words, it does not make any economic sense to get married.

As I mentioned earlier, the courts have accepted the federal government's claim that there are no reasonable alternatives to the marriage penalty tax provisions. According to federal officials, the chief reason for its retention in our tax structure is that is the inevitable outcome of a system that uses the family as the primary unit of taxation, that employs a progressive rate of taxation, and that attempts to preserve equity among married couples with the same total income.

What we need is a change in our tax system. A variety of proposals have been introduced to eliminate the marriage tax. They range from allowing married couples a tax deduction of 10 percent of the lower spouse's income up to $1,000 to giving couples the option of filing their tax returns as if they were single. While I support both attempts at reform mentioned here, I prefer the latter effort to eliminate the marriage tax, and I urge its adoption by this Committee.

The plan to permit married persons to file separate returns and to use the rate schedules that apply to single taxpayers is not only the easiest and most effective way to repeal the marriage tax, but it is also the most equitable. Moreover, it would not necessitate a drastic change in the present tax structure, but would simply require a reexamination of the assumption that married couples earning identical incomes should pay equal amounts in taxes.

The arguments behind this assumption are flawed in many respects. First, it has been argued that economies of scale are produced by the marriage of two peopel who previously maintained separate households, thereby contributing to reduced living expenses. Proponents of the present penalty say that because these marriages result in savings, the couples should pay more taxes than two single persons with lesser individual incomes. However, this argument does not consider the fact that the vast majority of unmarried working individuals share living arrangements and other expenses. Furthermore, many of these individuals do not have to warry about expenses such as child care costs that are incurred by married couples.

Secondly, it has been argued that married persons can pool their incomes, thereby generating a greater portion of their total income for discretionary use. While this may be true in some cases, it is most often not. Many discretionary expenses, such as medical and recreational costs, are incurred on an individual basis and are not subject to "expense pooling."

Consequently, what we need is a tax system that is neutral with respect to marriage. Change from our present system could be accomplished by shifting the taxable unit away from the family and to the individual. Each person would be taxed on his or her income and would not be penalized for his or her decision to marry.

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[1] *See Single v. Married*, supra note 28, at 304 in Gerzog, Wendy. "Marriage Penalty: The Working Couple's Dilemma." Fordham Law Review, vol. 47, p. 26.

Such a change would not result in an adverse impact on other taxpayers. No other individual's taxes would be raised. However, the change would bring a more equitable situation in which married couples would be able to file their returns as individuals. The second wage earner would no longer be discriminated against. And no longer would we allow a cohabitating unmarried couple the luxury of paying less in taxes than their married counterparts.

I respectfully urge the Committee to carefully review and support the proposed changes in the tax structure so that we can, once and for all, make the system neutral with respect to marital status.

HIGHSTOWN, N.J., *April 7, 1980.*

JOHN M. MARTIN,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR SIR: We support Mrs. Millicent Fenwick's bill, allowing married working couples the option of being taxed as if they were single.

Please add our names to the list of supporters. Thank you.

Very truly yours,

ERNEST B. TURP.
VIRGINIA L. TURP.

BOULDER, COLO., *March 25, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: There could probably be no better day than today to write you pertaining to the unjust, unfair, and what I consider unlawful "tax on marriage" penalty. Today I received a letter from Millicent Fenwick, congresswoman, plus, most of all, my CPA called and advised me that my wife and I owe an additional $4,200 to Federal taxes this year.

For quite some time now I have corresponded with various members of Congress in trying to gain support for this unfair tax law. I have written your Chairman, Rep. Al Ullman, several times. My reply has been over the years, "Oh, we plan to take a look at it." This is the same reply he gave to "60 Minutes" TV show several years ago when they featured a segment devoted to a couple that gets a divorce each year just before tax time and spends a few weeks on the islands. Well, I think the time has come to not only take a "look at it" but to do some serious revising of this discriminatory marriage tax.

I find it hard to believe that, in this country, with its many laws dealing with all forms of discrimination, that legislation such as this could ever have been made into law. Could you please explain to me and my wife why what I earn should affect what she earns, vice-versa? We should each be taxed upon our own earned incomes. In no way should one affect the other as it now does when we are forced to combine our incomes together and be forced into a much higher tax bracket.

So you may be concerned about the possible loss of $2 to $3 billion tax revenue dollars. Why? Your outdated, regressive, progressive federal tax brackets each year bring you a $30 to $40 billion tax increase, and then in turn various token tax cuts are passed back to us, not even a trickle of what we have been penalized for by our more productivity and both working. You hear a lot of talk about worker productivity being low and affecting inflation. Well, there's part of your answer, taxes as they are now instituted discourage increased productivity.

Please, isn't it about time that the backbone of this nation receives equal treatment under the law? Isn't it about time the entire tax structure is revised, regardless of the lessening of monies you can spend so freely? Isn't it about time you encourage worker productivity?

My wife is seriously considering quitting her very good job at the university, one she has held for over 16 years. Each year we find ourselves nearing the 50 percent bracket and wonder why we are both working, except to pay higher disproportionate taxes. Isn't it time to index according to inflation? I know your main item on the agenda is the "marriage tax", but I just wanted to remind you of other reasons why we insist on fairer tax laws.

The only way that inflation can be nipped in the bud is by a huge tax cut (regardless of unemployment results). For, the end solution of where we are heading now will be much worse. Also, a huge cut in Government spending (for the same reasons mentioned above). After all, what will the free-spending Congress people use for funds if the well runs dry?

The wife and I earn about $21,000 each, earn about $14,000 additional income. We claim no dependents, pay in much higher withholding taxes all year to try and avoid such a "sting" at tax time, then we are told we owe an additional $4,200, over half of which is directly related to the "marriage tax."

We sincerely, respectfully urge you to eliminate this very unfair, discriminate form of taxation on married couples. Thank you.

Sincerely,

STEVE P. VALENTIK.

STATEMENT OF HON. GUY VANDER JAGT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

First of all, I want to commend our colleague from New Jersey, Mrs. Fenwick, for doggedly pursuing this issue. She has led the fight for tax reform to eliminate the "marriage tax," along with Senator Mac Mathias in the Senate and has persuaded over two hundred of us to join with her as cosponsors of H.R. 3609.

But it really hasn't been hard to get people interested in making this kind of change in the tax laws to end the inequitable tax on married couples who work. I should point out, Mr. Chairman, that there are not that many issues on which my local, Muskegon, Michigan, Chronicle newspaper agrees with the editorials of the Washington Post, but this is one of them. The Muskegon Chronicle, has published at least two major editorials supporting the Fenwick-Mathias legislation to end the tax on marriage.

As great as the support has been for this change, I suspect there would be even more widespread demands for elimination of this tax treatment of working couples if more people realized just how much a family is penalized for having both spouses work. For most couples who work, the higher tax for being married is at least several hundred dollars, for others the penalty is in the thousands.

Today, more couples have both spouses working than only one. There are a great many reasons for the rapid growth in the number of two-earner families. Many more women are seeking careers of their own than ever before. But, for many families, it has become an economic necessity for both spouses to work to maintain the standard of living they are used to.

However, that second spouse who goes to work is the most heavily taxed worker in America. Not only does he or she face the escalating social security tax, but that extra income throws the couple into a higher income tax bracket.

When you add up the higher expenses a family faces when both spouses work, such as higher transportation costs, clothing costs and child care expenses with those higher taxes, you see that those families with two earners just don't do nearly as well as one would expect probably far less than they themselves realize.

It's important to realize that the marriage tax we are talking about doesn't just hit the so-called "two lawyer" couple who have two large incomes. On the contrary, it hits most on lower income families who just can't make ends meet unless both husband and wife go to work. Of course, the actual dollar penalty for lower income two-earner families is not as great as the extra tax a higher income couple would pay, but it is probably more important to the lower bracket couple that is struggling to barely get by.

At this point, Mr. Chairman, I think we all recognize that the present tax structure does, in fact, impose a hefty penalty on those couples who become, and remain, legally married with both husband and wife working. The big question that remains is what can we do about it.

Certainly, we don't want to create another inequity to single individuals, unmarried heads of households or any other group, as we did in 1969 when the Code was changed to prevent single taxpayers from being penalized. But, I think the thrust of Mrs. Fenwick's bill, which would allow a couple the option of filing either jointly or separately, provides a very equitable solution that should not penalize any particular family group.

There are, of course, a few details that will have to be worked out, such as the tax treatment of unearned income, but I think we certainly have the ability to deal with some of those details if we do it now in a considered manner.

The Treasury is instinctively concerned about this kind of change because it would reduce revenues . . . and we can't do that now that we are working to balance the budget by raising taxes. But this kind of change in the tax code would be a good place to start cutting taxes, the tax relief would be felt by the group that is now getting hit the very hardest by rising taxes and inflation. We have to do something to help out working families, and this is the logical answer.

President Carter, upon assuming office, expressed his support for the family concept, and even prodded some members of his staff to affix the stamp of legality on their living situations. But right here we have a major aspect of government policy—the tax policy which touches us all—substantially penalizing couples who work, simply because they are married. That is hardly a way to encourage the family institution that we all cherish. It has already resulted in some bizzare, but well-publicized, schemes that some couples have adopted to divorce each year in order to save themselves thousands of dollars in taxes. The U.S. Government should not force couples to divorce—or even discourage them from marrying—by imposing higher taxes on married working families.

There are about 40 million Americans who are in this kind of situation where they are being penalized through the tax code simply because they are married. Those people are looking to us today for some help. Millions more are looking toward us to make a change in this area purely from the point of view of equity of treatment. We should not let them down, and must make every effort to pass H.R. 3609 or a similar bill to end this unfair tax treatment of families with two workers.

West Palm Beach, Fla., *March 23, 1980.*

Mr. John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

Dear Mr. Martin: I am in favor of H.R. 3609, Mrs. Fenwick's bill to allow married couples to file income tax as singles, if they so choose.

The U.S. Government should not discourage marriage between people by taxing it.

Some people live together but do not tie the knot because they resent the increase in taxes.

Thank you.

Sincerely,

Mr. David J. Wacksman.

Arlington, Va., *March 27, 1980.*

John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means,
U.S. House of Representatives.

Dear Mr. Martin: We are currently employed by the Department of Agriculture's Food and Nutrition Service, and have comparable salaries. For 1979, we had the "privilege" of paying a combined Federal Income Tax of almost $10,000. Had we not been married, our (combined) Federal tax would have been approximately $2,100 less. The fact that we had to pay more tax because we are married is outrageous, to say the least. We implore the Committee to amend the tax laws to eliminate this inequity.

Thank you for the opportunity to present this statement for the record of the hearings concerning this matter.

Yours truly,

David N. Walters.
Linda P. Walters.

Columbus, Ind., *March 27, 1980.*

John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

Dear Mr. Martin: I am volunteering to present oral testimony on legislative proposals concerning tax discrimination based on marital status. A summary of my comments follows:

A two-career couple pays several thousand dollars more in Federal income tax each year than two unmarried people with the same income as the couple.

A two-career couple pays more tax than a one-career couple with the same total income because the one-career couple pays only one FICA tax while the two-career couple pays one FICA tax on each income.

My recommendation is that the tax rate applied to an income level does not vary with respect to the marital status of the individual earning the income.

The government should not offer an incentive or disincentive (through the tax laws) for two wage earners to be married or single.

Yours truly,

SUSAN R. WEIL.

P.S.—I am a private citizen not affiliated with an organization.

STATEMENT OF HON. G. WILLIAM WHITEHURST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Thank you for the opportunity to appear before you today and offer testimony on legislation before the Congress that would significantly reduce the inequities of our tax laws as they apply to the overwhelming majority of our country's taxpayers who are presently overtaxed, by conservative estimates, at $3 billion annually.

I have introduced a bill, H.R. 2077, which I believe in large measure will remove the discriminatory nature of the manner in which taxes are levied, particularly as they apply to single persons and married couples, both of whom work. This legislation would extend to all unmarried individuals the full tax benefits of income splitting now enjoyed by married individuals filing joint returns on a single income.

In addition, my legislation would finally give those working married couples a much fairer rate of taxation than now exists. At present, this large and rapidly expanding segment of the taxpaying public is, in many cases, more highly taxed than two single persons earning the same income and living together.

The bill I have introduced proposes a substantial tax cut for single persons and married couples, both of whom are employed. In the latter category alone, there are approximately 44 million individuals who stand to benefit from this legislation.

Much has been made in the past decade of the so-called "marriage tax" or "marriage penalty," which unfairly penalizes the married couple composed of two career-minded individuals. The magnitude of this issue becomes increasingly obvious as more and more women join the labor force. The figures for the past year show that 50 percent of all women are in the labor force and that they now make up 42 percent of all workers in the United States. In the twenty-year period from 1956 to 1976, the labor force participation of married women doubled from 11 million to 22 million. In many cases, women are joining the labor force out of necessity in order for their families to continue to maintain their accustomed life styles.

As the emergence of women into the labor force has been clearly defined, our tax laws have not kept pace with this phenomenon. Far from it; our tax laws do nothing to encourage the career-minded couple from reaching their potential in professional life or the non-working spouse who decides to work a part-time job to supplement the family's income. These millions of taxpayers are growing increasingly bitter and disillusioned as they observe the growing gap in the degree of work and sacrifice they expend and the amount of tax dollars they must pay.

I refuse to believe that it is simply coincidental that the rate of persons of the opposite sex living together outside marriage has risen by 80 percent since 1970. At present, there are approximately 2 million persons living with an unrelated person of the opposite sex. To that I would add that it is small wonder that the number is not far higher in light of the inequities built into the tax laws of this country.

Indeed, the married couple in which each partner wishes to pursue a career is sometimes even driven to divorce to shelter themselves from the voracious appetite of the Internal Revenue Service. In effect, what the tax laws are saying to the spouse of a married couple who chooses to enter the labor force is that he/she will have to pay extra taxes for the right to work while maintaining a marriage.

One reason for this is that since all of the income reported on a joint return is combined for purposes of taxation rather than taxed according to the individual rates which apply to the earner, each dollar earned by secondary workers in the family is taxed at that family's marginal or highest tax rate.

The married couple with two workers is also penalized by the Social Security system. Since all payments into the system are based on individual earnings, although benefits are predicated on a per-family basis, once the one-earner family passes the taxable base it pays nothing further into the system. This is not true with the two-earner family, which can pay to a maximum of double the amount of a one-earner family.

While much has been heard of the "marriage tax," let us not overlook by any means the cries of single taxpayers, on whom we continue to heap a disproportionate share of taxes. Their angry pleas are familiar around the halls of Congress and will certainly grow in intensity until we take positive steps to alleviate this condition.

What I am proposing before this Congress is to apply the same tax rate schedule to every individual's income, regardless of marital status. I believe the most equitable way to achieve this is to require all taxpayers to utilize the current tax rate Schedule Y for married individuals filing joint returns and qualifying widows and widowers.

I believe this is clearly the most equitable course on which to proceed, as evidenced by the examples set forth here.

Using the 1979 tax rate schedules, a single person whose taxable income is $30,000 now pays $7,434 in taxes. My bill would reduce this person's tax bill by $1,196 to $6,238.

A married couple in which both partners earn $15,000 now pays $6,238 in taxes. My bill would cut this couple's taxes by $2,128 to $4,110, or the same amount paid by two single persons who pay a total of $5,210 on their two incomes.

For the married couple with one income, taxes would remain the same under my legislation.

My bill would also benefit singles filing as heads of households. A widowed, divorced, or single parent earning $30,000 now pays $7,363 in taxes—$1,125 more a year than the married couple with one income.

I urge this Committee to recognize these long-ignored inequities in our system of taxation that affect so many millions of people. It's been said that "To tax and to please, no more than to love and to be wise, is not given to men." I would add, that as in love, we should never stop trying.

WASHINGTON, D.C.

MY DEAR MR. MARTIN: In regard to the Marriage Tax. You should not tax marriage. You should pass H.R. 3609, sponsored by Mrs. Fenwick, to end the marriage tax.

Yours sincerely,

MRS. KAY WHITTEN.

STATEMENT OF ELLEN T. AND BRANN J. WRY, TRENTON, N.J.

We write to support H.R. 3609, the bill which would allow two-earner married couples the option of filing income tax returns as if they were single.

Undoubtedly, this committee has been provided with extensive documentation on the need for this law. Our resources do not permit us to add much to such data which Member of Congress Fenwick and the cosponsors have surely already submitted.

Instead, we present a personal view of the bill. Our argument is short and simple. We think the figures involved should be as compelling an argument as any discussion of the policy, social or financial ramifications of the present law would be.

This year, we will file a joint return and will pay approximately $12,000 in income tax. Were we single and thus able to file two separate returns, one of us would pay about $2,800 and the other about $7,400 for a total of approximately $10,200. We would pay about $1800 less than we must now pay.

We have been married about ten years and plan to continue our respective careers until retirement, about 30 years from now. Over our working life we will contribute at least $80,000 more to the support of our government than single professionals earning precisely the same amount.

The Internal Revenue Code abounds with such inequities, most of which do not concern you now. Section 121 (a) and (b) provide that two unmarried taxpayers who own a house together may each have a lifetime exclusion of up to $100,000 of the capital gain on the sale of that house. Married taxpayers have only one exclusion. In fact, if a widowed or divorced person marries someone who has already used the lifetime exclusion, that person loses the exclusion he or she had as single person.

The inequities in the present law are too obvious to require elaboration. There are two equally obvious solutions which appeal to many: to remain single and live together or to divorce. Our commitment to one another and our religious beliefs make those solutions unacceptable to us. Nevertheless, we feel strongly that the price we are required to pay for following our beliefs and acquiescing in the kind of relationship our society supposedly approves and encourages, is inordinately high.

We urge you to support H.R. 3609.

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